

Nos. 18-1958 & 18-1995

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AMERICAN MUNICIPAL POWER, INC.
Petitioner/Cross-Respondent,
v.
NATIONAL LABOR RELATIONS BOARD
Respondent/Cross-Petitioner.

ON PETITION FOR REVIEW OF THE DECISION AND ORDER OF THE
NATIONAL LABOR RELATIONS BOARD IN *AMERICAN MUNICIPAL
POWER, INC. AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO, LOCAL UNION NO. 816,*
NLRB CASE NO. 10-CA-221403

**JOINT APPENDIX OF PETITIONER/CROSS-RESPONDENT
AMERICAN MUNICIPAL POWER, INC.**

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November 20, 2018

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¹ According to the Corrected Certified List of the NLRB, 6th Cir. Case Nos. 18-1958, 18-1995 (October 24, 2018) (CM/ECF Doc. No. 14, pp. 2–5, 6th Cir. Case No. 18-1958; also included in this Joint Appendix, pp. 162–165).

² The copy of the Decision and Order of the NLRB, 366 NLRB No. 160 (August 14, 2018) and the Court’s Case Opening Letter (CM/ECF Doc. No. 1, p. 3–8, 6th Cir. Case No. 18-1958) are omitted.

³ The copy of the Decision and Order of the NLRB, 366 NLRB No. 160 (August 14, 2018), the Board’s cover letter, and the Court’s Case Opening Letter (CM/ECF Doc. No. 3, p. 3–10, 6th Cir. Case No. 18-1995) are omitted.

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⁴ Request for Review Exhibit 1 (Decision and Direction of Election) and Exhibit 2 (Hearing Transcript Excerpts) are omitted from this Joint Appendix to avoid duplication, as the Decision and Direction of Election and the entire Hearing Transcript are already included herein.

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CERTIFICATION OF COUNSEL

Pursuant to 6th Cir. R. 30(b)(4)(E), I certify that the documents contained in this Joint Appendix are properly part of the record in this matter.

November 20, 2018

/s/ Kerry P. Hastings

Kerry P. Hastings

CERTIFICATE OF SERVICE

I certify that on November 20, 2018, I filed the foregoing Joint Appendix of Petitioner/Cross-Respondent American Municipal Power, Inc., using the Court's CM/ECF filing system which will send electronic notice to all parties or their counsel of record.

/s/ Kerry P. Hastings

Kerry P. Hastings

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

American Municipal Power, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816. Case 10-CA-221403

August 14, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, KAPLAN, AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 4, 2018, by International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816 (the Union), the General Counsel issued the complaint on June 14, 2018, alleging that American Municipal Power, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 10-RC-213684. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On July 5, 2018, the General Counsel filed a Motion for Summary Judgment. On July 10, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification of representative on the basis of its contention, raised and rejected in the underlying representation proceeding, that the unit is not appropriate under the Act because it includes employees who do not share a community of interest with the employees who should be in the unit.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representa-

tion proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it shown any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been an Ohio corporation with a hydroelectric power-generation plant in Smithland, Kentucky, and has been engaged in the generation, transmission, and distribution of electric power and energy.

In conducting its operations described above, the Respondent annually purchases and receives at its Smithland, Kentucky power plant, goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on February 23, 2018, the Union was certified² on March 6, 2018, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

¹ The Respondent's answer denies par. 6 of the complaint, which sets forth the appropriate unit. The unit issue, however, was fully litigated and resolved in the underlying representation proceeding. Accordingly, the Respondent's denial of the appropriateness of the unit does not raise any litigable issue in this proceeding.

² By unpublished order dated May 31, 2018, the Board denied the Respondent's request for review.

B. Refusal to Bargain

By letters dated April 10 and May 14, 2018, respectively, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit employees. Since about April 10, 2018, the Respondent has failed and refused to do so.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since April 10, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, American Municipal Power, Inc., Smithland, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Smithland, Kentucky, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 10, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 14, 2018

Mark Gaston Pearce,

Member

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

AMERICAN MUNICIPAL POWER, INC.

3

 Marvin E. Kaplan, Member

 William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
 POSTED BY ORDER OF THE
 NATIONAL LABOR RELATIONS BOARD
 An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816 (the Union) as the ex-

clusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time Operator I and Operator II employees employed by us at our facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

AMERICAN MUNICIPAL POWER, INC.

The Board's decision can be found at www.nlr.gov/case/10-CA-221403 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

American Municipal Power, Inc.,)	Case No. <u>18-1958</u>
)	
Petitioner,)	NLRB Case No. 10-CA-221403
v.)	
)	
National Labor Relations Board,)	<u>Petition for Review</u>
)	
Respondent.)	

American Municipal Power, Inc. hereby petitions the Court for review of the Decision and Order of the National Labor Relations Board, 366 NLRB No. 160, entered on August 14, 2018. A copy of the Decision and Order is attached.

Respectfully submitted,

/s/ Kerry P. Hastings
Kerry P. Hastings
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
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Attorney for Petitioner American
Municipal Power, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Petition for Review was served upon Meagan B. Dolleris, counsel for Respondent National Labor Relations Board, Region 10, Nashville Resident Office, 810 Broadway, Suite 302, Nashville, TN 37203, and upon Joe P. Lesinski, Jr., counsel for International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816, Branstetter, Stranch & Jennings, PLLC, The Freedom Center, 223 Rosa L. Parks Avenue, Suite 200, Nashville, TN 37203, via regular mail, postage prepaid, this 24th day of August, 2018.

s/ Kerry P. Hastings

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

AMERICAN MUNICIPAL POWER, INC
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD
Respondent

No. ~~18-1958~~ 18-1995

Board Case No.
10-CA-221403

**CROSS-APPLICATION FOR ENFORCEMENT
OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

The National Labor Relations Board hereby cross-applies to the Court for enforcement of its Order issued against American Municipal Power, Inc. on August 14, 2018, in Board Case No. 10-CA-221403, reported at 366 NLRB No. 160. On August 24, 2018, the Petitioner, American Municipal Power, Inc., filed a petition with this Court to review the same Board Order. The Board seeks enforcement of its Order in full.

The Court has jurisdiction over this cross-application pursuant to Section 10(e) and (f) of the National Labor Relations Act, as amended (29 U.S.C. § 160(e) and (f)), because the Petitioner is aggrieved by the Board's order. Venue is proper in this Circuit because the unfair labor practices occurred in Smithland, Kentucky.

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, SE

Washington, DC 20570

(202) 273-2960

Dated at Washington, DC
this 30th day of August 2018

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

AMERICAN MUNICIPAL POWER, INC)	
Petitioner)	No. 18-1958
)	
v.)	Board Case No.
)	10-CA-221403
NATIONAL LABOR RELATIONS BOARD)	
Respondent)	

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2018, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for Sixth Circuit by using CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 30th day of August 2018

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 10

In the Matter of:

AMERICAN MUNICIPAL POWER,

Employer,

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS AFL-CIO IBEW
LOCAL UNION NO. 816,

Petitioner.

Case No. 10-RC-213684

The above-entitled matter came on for hearing, pursuant to notice, before **MEAGAN B. DOLLERIS**, Hearing Officer, at the National Labor Relations Board, Region 10, Nashville Resident Office Hearing Room, 810 Broadway, Suite 302, Nashville, Tennessee 37203, on **Tuesday, February 6, 2018**,
11:43 a.m.



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APPEARANCES

On behalf of the Employer:

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EXHIBITS

EXHIBIT

IDENTIFIED

IN EVIDENCE

Board:

B-1 (a) through B-1 (p)

7

8

B-2

8

8



1 PROCEEDINGS

2 HEARING OFFICER DOLLERIS: The hearing will be in order.

3 This is a formal hearing in the matter of American
4 Municipal Power, Inc. and International Brotherhood -- CIO,
5 Local Union No. 816, case 10-RC-213684, before the National
6 Labor Relations Board. The Hearing Officer appearing for the
7 National Labor Relations Board is Meagan Dolleris.

8 All parties have been informed of the procedures at formal
9 hearings before the Board by service of a description of
10 procedures in certification and decertification cases with the
11 notice of hearing. I have additional copies of this statement
12 for distribution, if any party wishes more.

13 Will counsel please state their appearances for the
14 record?

15 For the Petitioner -- representative for the Petitioner?

16 MR. MCDERMITT: Bert McDermitt. Spelling, B-E-R-T,
17 M-C-D as in David, E-R-M-I-T-T.

18 MR. DONATHAN: Chad Donathan. C-H-A-D, D-O-N-A-T-H-A-N.

19 HEARING OFFICER DOLLERIS: And for the Employer?

20 MR. STEPANIAK: Mark Stepaniak. S-T-E-P-A-N-I-A-K.
21 Counsel for the Employer.

22 HEARING OFFICER DOLLERIS: Are there any other
23 appearances?

24 Okay. Let the record show no response.

25 Are there any other persons, parties, or organizations in



1 the hearing room at this time who claim an interest in this
2 proceeding?

3 Let the record show no response.

4 Are there any motions to intervene in these proceedings to
5 be submitted to the Hearing Officer for a ruling by the
6 Regional Director at this time?

7 Let the record show no response.

8 Are the parties aware of any other employers or labor
9 organizations that have an interest in this proceeding?

10 Mr. McDermitt?

11 MR. MCDERMITT: No.

12 HEARING OFFICER DOLLERIS: Okay. Mr. Stepaniak?

13 MR. STEPANIAK: No.

14 HEARING OFFICER DOLLERIS: Are there any petitions pending
15 in other regional offices involving other facilities of the
16 Employer that you know of?

17 Mr. McDermitt?

18 MR. MCDERMITT: None that I'm aware of.

19 HEARING OFFICER DOLLERIS: Okay. Mr. Stepaniak?

20 MR. STEPANIAK: None.

21 HEARING OFFICER DOLLERIS: I would like to remind the
22 parties that prior to the close of the hearing, I will ask each
23 party to provide its position on the type, date or dates, time
24 or times, and location or locations of the election and the
25 eligibility period, including the most recent payroll period



1 ending date, but I will not permit litigation of those issues.
2 I also advise the parties to inquire as to the need for foreign
3 language ballots and notices of election.

4 I remind the parties that the hearing will continue from
5 day to day as necessary until completed, unless the Regional
6 Director concludes that extraordinary circumstances warrant
7 otherwise.

8 I remind the parties that upon request, you shall be
9 entitled to a reasonable period at the close of the hearing for
10 oral argument. There will be no post-hearing briefs in this
11 matter. The parties may offer into evidence a brief memo of
12 points and authorities, case citations, or other legal
13 arguments during the course of the hearing and before the
14 hearing closes.

15 I now propose to receive the formal papers. They have
16 been marked for identification as Board's Exhibits 1(a) through
17 1(p) inclusive, Exhibit 1(p) being an index and description of
18 the entire exhibit. The exhibit has already been shown to all
19 parties.

20 Are there any objections to the receipt of Board Exhibit 1
21 into the record?

22 Mr. McDermitt?

23 MR. MCDERMITT: No objections.

24 HEARING OFFICER DOLLERIS: Mr. Stepaniak?

25 MR. STEPANIAK: No objection.



1 HEARING OFFICER DOLLERIS: Additionally, we have prepared
2 a two-page stipulation to address as many issues as we can that
3 are not in dispute here. It's been signed by the parties, and
4 the parties have agreed that it could be moved into evidence.
5 So I propose to receive Board Exhibit 2, the stipulation, at
6 this time.

7 Any objection from Mr. McDermitt?

8 MR. MCDERMITT: No objection.

9 HEARING OFFICER DOLLERIS: Mr. Stepaniak?

10 MR. STEPANIAK: None.

11 HEARING OFFICER DOLLERIS: Board Exhibit 2 is received.

12 **(Board Exhibit Number 2 Received into Evidence)**

13 HEARING OFFICER DOLLERIS: And I don't think I officially
14 received Board Exhibit 1, so I do that now.

15 **(Board Exhibits Number 1(a) through 1(p) Received into**
16 **Evidence)**

17 THE COURT REPORTER: Okay.

18 HEARING OFFICER DOLLERIS: Are there any prehearing
19 motions made by any party that need to be addressed at this
20 time, other than the petition to revoke, which I'll get to in a
21 second?

22 Any other motions that you know of, Mr. McDermitt?

23 MR. MCDERMITT: No.

24 HEARING OFFICER DOLLERIS: Mr. Stepaniak?

25 MR. STEPANIAK: No.



1 HEARING OFFICER DOLLERIS: Okay. So just so we're on the
2 same page, throughout this hearing I'll probably refer to the
3 Employer as AMP or the Employer, and the Union as, you know,
4 IBEW or Electrical Workers. I will also refer to the
5 Employer's facility located at 1297 Smithland Damn Road,
6 Smithland, Kentucky, as the Smithland facility.

7 Does anyone object?

8 MR. STEPANIAK: We do not?

9 MR. MCDERMITT: No.

10 HEARING OFFICER DOLLERIS: Thank you.

11 Something else that we discussed off the record is that
12 the current petition requests all employees employed by the
13 Employer, dot, dot, dot, we discussed that it could be
14 stipulated that any unit found appropriate by the Regional
15 Director should include all full-time and regular part-time
16 Operator I and Operator II employees employed by American
17 Municipal Power, Inc. at its facility located at 1297 Smithland
18 Damn Road, Smithland, Kentucky, which should exclude all office
19 clerical employees, professional employees, confidential
20 employees, guards, and supervisors, as defined in the Act.

21 Is that correct, Mr. McDermitt?

22 MR. MCDERMITT: That is correct.

23 HEARING OFFICER DOLLERIS: Okay. And, Mr. Stepaniak?

24 MR. STEPANIAK: Yes. We have an objection to that in the
25 sense that the -- we do not object to changing all employees to



1 read Operator I and Operator II. We think that the included
2 part of the described unit should include language like
3 primarily assigned to its facility at 1297 Smithland Dam in
4 order to differentiate them from AMP employees who are
5 occasionally temporarily job assigned to Smithland, which is
6 the essential issue we think for this hearing today.

7 And as far as the excluded, we don't object to -- to the
8 addition of confidential employees as an excluded
9 classification, but we think it should also include all other
10 employees of the Company.

11 HEARING OFFICER DOLLERIS: Okay. Mr. McDermitt, how does
12 the Union feel about the inclusion of all other employees in
13 the excluded language? That question made no --

14 MR. MCDERMITT: The --

15 HEARING OFFICER DOLLERIS: -- sense. How does the Union
16 feel about "excluding," in quotes, all other employees?

17 MR. MCDERMITT: We're good with that.

18 HEARING OFFICER DOLLERIS: Okay. Thank you.

19 So as I hear it, there is a stipulation to change the
20 petition essentially to be full-time and regular part-time
21 Operator I and Operator II employees. That stipulation is
22 received.

23 The stipulation to add confidential employees as an
24 exclusion is received. But all other employees, I'm hearing
25 that you agree with that?



1 MR. STEPANIAK: Correct.

2 HEARING OFFICER DOLLERIS: That will be -- that will be
3 something the Regional Director will decide to include or
4 exclude, that language.

5 MR. STEPANIAK: Okay.

6 HEARING OFFICER DOLLERIS: Okay. I'd like to turn now to
7 the Employer's statement of position, which has been marked as
8 Board Exhibit 1(o). So to summarize the issue to be litigated
9 here, as I understand it, the only issue is whether employees
10 who are normally employed at other AMP facilities, such as one
11 in Cannelton, Indiana?

12 MR. STEPANIAK: Kentucky.

13 HEARING OFFICER DOLLERIS: Kentucky.

14 MR. STEPANIAK: A point of clarification, it's the
15 Cannelton Dam facility.

16 HEARING OFFICER DOLLERIS: Okay.

17 MR. STEPANIAK: -- but it's in Hawesville, Kentucky.

18 HEARING OFFICER DOLLERIS: Okay. And it's commonly
19 referred to as the Cannelton facility --

20 MR. STEPANIAK: Correct.

21 HEARING OFFICER DOLLERIS: -- and AMP? Okay.

22 So then the only thing is whether employees normally
23 employed at other AMP facilities, such as the Cannelton
24 facility, who are temporarily assigned to the Smithland
25 facility should be specifically excluded from the unit. If



1 anybody wants to agree or disagree or modify my description of
2 the issues, please do so. I'm just kind of trying to narrow it
3 down really quickly here.

4 MR. STEPANIAK: I would agree with that description.

5 HEARING OFFICER DOLLERIS: Thank you, Mr. Stepaniak.

6 Mr. McDermitt?

7 MR. MCDERMITT: We also agree with that description.

8 HEARING OFFICER DOLLERIS: Okay. Great.

9 So I'm sorry, back to Exhibit 1(f) -- 1(o), the statement
10 of position.

11 Mr. Stepaniak, regarding question four, is there anyone
12 currently today working at the Smithland facility who is
13 normally assigned to another AMP facility?

14 MR. STEPANIAK: There's no one working there at this
15 moment, but there was someone working there as recently as two
16 days before the filing of the petition.

17 HEARING OFFICER DOLLERIS: Okay. And on attachment D of
18 your statement of position, names of employees to be excluded
19 from the petitioned for unit. It's my understanding that Joe
20 Frakes is an Operator II, who normally works out of the
21 Cannelton facility, who occasionally works at Smithland.

22 MR. STEPANIAK: That's correct.

23 HEARING OFFICER DOLLERIS: Okay. What is your position on
24 whether Mr. Frakes should be included or excluded from the
25 bargaining unit?

1 MR. STEPANIAK: Mr. Frakes should be excluded from the
2 bargaining unit as a person who is an employee of AMP but is
3 primarily assigned to the Cannelton facility; is only
4 sporadically and occasionally assigned to the Smithland
5 facility.

6 HEARING OFFICER DOLLERIS: Okay.

7 MR. STEPANIAK: So I have community of interest with the
8 eight employees identified on Exhibit B.

9 HEARING OFFICER DOLLERIS: Okay.

10 MR. STEPANIAK: He should, therefore, be excluded
11 specifically by its classification as an employee at Cannelton.

12 HEARING OFFICER DOLLERIS: Okay. Does the Employer
13 believe he is a supervisor under the Act?

14 MR. STEPANIAK: He is not a supervisor under the Act. He
15 has none of Section 2(11) indicia supervisory status.

16 HEARING OFFICER DOLLERIS: Okay.

17 MR. STEPANIAK: That's true in Cannelton and it's true
18 when he's temporarily assigned to Smithland.

19 HEARING OFFICER DOLLERIS: Okay. Mr. McDermitt, what is
20 the Union's position of whether Mr. Frakes should be included
21 or excluded from the bargaining unit?

22 MR. MCDERMITT: It's the position of the Union that he
23 should be excluded from the bargaining unit.

24 HEARING OFFICER DOLLERIS: And on what basis is that,
25 you're basing that exclusion?

1 MR. MCDERMITT: On the community of interest.

2 HEARING OFFICER DOLLERIS: Okay. Does the Union believe
3 he is a supervisor under the Act?

4 MR. MCDERMITT: We do not have enough information at this
5 time to formulate an opinion on that, or confidential -- our
6 conversations with the employees, we believe that that is a
7 possibility based on their perception of his duties and
8 responsibilities.

9 HEARING OFFICER DOLLERIS: Okay. Thank you.

10 So at this time I would like to take an offer of proof
11 from the Employer identifying each witness the Employer would
12 call to testify concerning the issue and summarizing each
13 witness' testimony.

14 MR. STEPANIAK: Okay. The Employer would call Ron
15 Woodward. Ron Woodward is a management employee of AMP who has
16 management responsibility over the Cannelton Dam as well as
17 over the Smithland facility. Mr. Woodward has spent most of
18 his time in the last six months working out of the Smithland
19 facility since there has been no immediate direct supervisor
20 there since the retirement of the direct supervisor in June of
21 2017.

22 Mr. Woodward, by virtue of working almost every day out at
23 the Smithland facility, has firsthand knowledge, as well as
24 knowledge gained through receiving information in the ordinary
25 course of business about work done by the eight Smithland



1 employees primarily assigned to the Smithland facilities, and
2 identified on Employer's attachment B to the position
3 statement, as well as the duties and functions of other
4 employees of AMP who worked out of Cannelton and who are
5 occasionally, sporadically, or periodically assigned to the
6 Smithland facility.

7 His testimony would show that a Cannelton operator holding
8 the job classification of Operator II, a Mr. Haycraft,
9 H-A-Y-C-R-A-F-T, spent two days in April of 2017 training and
10 assisting employees in Smithland in the operation of removal of
11 a bulkhead at the dam. In doing so, he would have been
12 performing what would otherwise be bargaining unit work in the
13 event the Union were certified in this case.

14 We don't think Mr. Haycraft has a community of interest
15 with the eight fellows identified in Exhibit B. He's not a
16 supervisor. But he's an operator of AMP. In the unit
17 description proposed by the Union, which is to cover all AMP
18 employees working at the Smithland facility, would, in that
19 event, have covered him on those two days, which we think is
20 inappropriate.

21 The testimony would also show that a Mr. Josh Stewart,
22 S-T-E-W-A-R-T, spent three days in Smithland in June of 2017,
23 and also one day in July of 2017, training the Smithland
24 operators, identified on Exhibit B, in the proper procedures
25 for lockout-tagout, and other safety related, you know,

1 processes. In doing that, Mr. Stewart would be performing what
2 otherwise would be considered Operator II work at Smithland.
3 Mr. Stewart is not a supervisor. He possesses none of the
4 2(11) indicia of supervisory status.

5 Likewise, a Mr. Harrel, H-A-R-R-E-L, spent four days on
6 site in Smithland in March of 2017 working with the Smithland
7 operators in what's called trash rake -- that's T-R-A-S-H,
8 rake, R-A-K-E -- training in basically the removal of debris at
9 the dam, if you will. And in July of 2017 worked with the
10 Smithland operators in training on safety data sheets, which
11 basically is chemical control and related information. This
12 work that he did there in Smithland would be bargaining unit
13 work if the Union were to win the election. And the unit
14 description would remain as proposed by the petition.

15 The evidence, likewise, would show that Jonathan Woosley,
16 W-O-O-S-L-E-Y, spent one day in April of 2017 working with the
17 Smithland operators on upgrading computer logics on the trash
18 rake. This work would be considered maintenance and would be
19 Operator II work.

20 Each of the persons I've mentioned, Haycraft, Stewart,
21 Harrel, and Woosley, are regular full-time operators at the
22 Cannelton Dam in Hawesville, Kentucky, and were simply
23 temporarily job transferred for those periods of time, which I
24 already indicated, as part of an intercompany temporary
25 transfer.

1 In addition, the Company employees out of its Cannelton
2 facility a fellow named Joe Frakes, F-R-A-K-E-S. Mr. Frakes
3 worked five days a week at the Smithland facility from June to
4 approximately October of 2017. Most of his assigned
5 responsibilities while working at Smithland involved clerical
6 or confidential work in the sense that he was approving
7 purchase orders and doing other office type work. This was
8 necessitated by the retirement of the supervisor at Smithland.
9 So he was helping out in that regard.

10 However, regularly during that assignment, he would
11 troubleshoot equipment and otherwise assist operators at
12 Smithland, and, would, therefore, on occasion be doing what
13 otherwise would be considered bargaining unit work in the
14 then-certified unit.

15 Starting in October of 2017, Mr. Frakes reduced his
16 assignment to -- Smithland was reduced from five days a week to
17 one day a week. And, again, his primary responsibilities at
18 Smithland would have been this sort of clerical, confidential
19 work, office work, if you will, but he would have also have
20 done work that would be considered bargaining unit work,
21 including, for example, troubleshooting equipment, which is
22 considered operating work.

23 The evidence that Mr. Woodson (sic) would produce would be
24 not that Mr. Frakes or any of these other fellows were regular
25 operators at Smithland, but that they occasionally are job

1 transferred to Smithland from Cannelton, and, when there, have
2 the occasion to do work that would otherwise be described by
3 unit description.

4 Also, the Company, because it only employs eight people at
5 this location, in the event it can become an outage, might have
6 the need or the opportunity to move people from other
7 facilities on a temporary basis to get the plant back up and
8 running. And if they did that, they would be AMP employees
9 working at the Smithland facility, which, arguably, would
10 capture them within the unit inclusion, which we think is
11 inappropriate, and which we believe the unit -- the Union,
12 excuse me, the IBEW, also thinks is inappropriate.

13 So when we're -- that would be sum of the testimony. In
14 the conclusion, we would ask the Regional Director to withdraw
15 from that, is that much like seasonal employees or casual
16 laborers, because there's a history that goes back the entire
17 operational period of the Smithland facility of having people
18 from other facilities come down there on a temporary, casual
19 basis, that they be expressly excluded from the unit
20 description, and also that they not be included for purposes of
21 voter eligibility.

22 HEARING OFFICER DOLLERIS: Thank you.

23 If I may, just a couple of follow-up questions.

24 MR. STEPANIAK: Sure.

25 HEARING OFFICER DOLLERIS: You mentioned -- Mr. Woosley's,



1 when he was working at Smithland upgrading computer logics on
2 the trash rake, did that involve training the Smithland
3 employees?

4 MR. STEPANIAK: Okay. He did the work and then he would
5 train them --

6 HEARING OFFICER DOLLERIS: Okay.

7 MR. STEPANIAK: -- on how to follow behind, and do the
8 work --

9 HEARING OFFICER DOLLERIS: Okay.

10 MR. STEPANIAK: -- as well.

11 HEARING OFFICER DOLLERIS: And do operators II, who are
12 usually at Smithland, is part of their job duty to train
13 operators I or other people?

14 MR. STEPANIAK: In the event, for example, we were to hire
15 somebody, and we have hired somebody, on Exhibit B, in the
16 month of January, 2018, that the other operators would be
17 expected to do OJT, on-the-job training, of those operators
18 with respect to how to do their job, troubleshoot equipment,
19 learn from history, this sort of thing. So, yes, the -- it is
20 not as if all training is given to operators exclusively by
21 some member of management.

22 HEARING OFFICER DOLLERIS: Okay. And these occurrences, I
23 don't seem to see any sort of pattern in them necessarily. Is
24 there a schedule of when somebody from Cannelton might come to
25 do training or help out?

1 MR. STEPANIAK: In Mr. Frakes' case, it was scheduled, his
2 work at Smithland. When he was working five days a week, that
3 was scheduled to be five days a week; when he was working one
4 day a week, it was scheduled to be one day a week. The other
5 individuals were sent there when the need for their particular
6 assistance arose.

7 HEARING OFFICER DOLLERIS: So was that kind of the day of
8 or the day before, hey, we need you to come cover for this, or,
9 do this training?

10 MR. STEPANIAK: Yeah, they would have been -- they would
11 know the week of their assignment that they'd be going down
12 there.

13 And the evidence would also show, for example, that,
14 unlike the Smithland employees identified on Exhibit B, those
15 eight individuals, the folks sent down from Cannelton, you
16 know, would be given a company vehicle to use, would be put up
17 in a hotel, if necessary, the Company could pay their expenses
18 in that regard. And these are all different -- points of
19 differentiation in terms of community of interest with the
20 Smithland employees.

21 HEARING OFFICER DOLLERIS: And I understand that there's
22 no one currently as of today in Smithland from Cannelton or
23 anywhere else. Is there anyone scheduled to be at Smithland as
24 of today, that you know of?

25 MR. STEPANIAK: Not as of today.



1 HEARING OFFICER DOLLERIS: Thank you.

2 Mr. McDermitt, or, Mr. Donathan, would your witnesses
3 testify the same or contrary? And if contrary, how would they
4 testify?

5 MR. MCDERMITT: It's our understanding that -- from our
6 conversations with the employees, that it would be contrary to
7 the information that we're hearing as far as the actual time
8 frames that those employees were there.

9 I'd like to state that it's not the Union's position that
10 these activities are not uncommon within the industry, and that
11 the unit size has an impact and -- on the need and the desire
12 of the Company -- or the prerequisite for the Company to have
13 individuals from other facilities come to this location. It's
14 the position of the Union that by voluntarily agreeing, that
15 we, in turn, change the bargaining unit work related to those
16 positions to permissive bargaining subjects as opposed to
17 mandatory subjects of bargaining.

18 I'd like to ask, related to some of the statements that he
19 made, and in particular, to the question that the Hearing
20 Officer asked, when the work was being done on the PLC, if I
21 remember correctly, for the trash rake, were the Smithland
22 employees present to observe that work?

23 HEARING OFFICER DOLLERIS: And that would be Mr. Woosley?
24 Oh, no --

25 UNIDENTIFIED SPEAKER: (No audible response)



1 HEARING OFFICER DOLLERIS: Is PLC the same as the computer
2 logics?

3 MR. MCDERMITT: Computer logics, yes. Programmable
4 controllers.

5 (Counsel confer)

6 MR. STEPANIAK: We wouldn't have testimony on whether
7 there were -- whether the other guys were there with Woosley --
8 like that, or not. We just simply -- we simply just, as we sit
9 here today, at this moment, don't know. But would point out
10 that doing that work would be work that an Operator II would
11 do. Which that if a year from now it needed to be upgraded
12 again, one of these guys presumably would be doing it if they
13 had the skills to do it.

14 MR. MCDERMITT: If that particular work needed done today,
15 would Mr. Woosley need to come down there to perform that work?

16 MR. STEPANIAK: Yeah. Of course, it would depend on
17 whether or not anybody there today is competent to do it. But
18 the ultimate objective would be to get everybody -- not
19 everybody, but a sufficient number of people in Smithland who
20 would be competent to do that so you wouldn't have to have
21 people drive the 180 miles -- approximately 180 miles from the
22 Cannelton Dam.

23 So Matt, for example, who's here with us today, has worked
24 on that PLC and has helped troubleshoot it, and whatnot. But
25 that's a similar thing to what Jonathan Woosley did. And so

1 the question of whether or not it would come up again --
2 whether it's capable of repetition would depend on the problem
3 and the skill level of the people then at Cannelton.

4 And so, you know, in this context of an RC hearing and a
5 Union election would tend to see these things as disaggregated.
6 But from the Company's point of view, if you have experience
7 somewhere and you have a problem somewhere else, you could send
8 it there to fix it. This would be completely logical.

9 HEARING OFFICER DOLLERIS: And, Mr. McDermitt, to follow
10 up, you said your witnesses would testify contrary to some of
11 the time frames. Meaning, maybe it wasn't April but it was
12 really May --

13 MR. MCDERMITT: And --

14 HEARING OFFICER DOLLERIS: -- maybe it wasn't three days,
15 it was really two-and-a-half, something like that?

16 MR. MCDERMITT: It's our understanding, with the exception
17 of Mr. Frakes, the last other -- or I should say what appears
18 to be the Cannelton employees coming down to the Smithland
19 facility was six months ago.

20 MR. STEPANIAK: Yeah. I think July. I don't know if
21 that's -- that's a little -- it's roughly six months, yeah.
22 Yeah. So I'm not sure we're apart in that.

23 MR. MCDERMITT: Okay.

24 MR. STEPANIAK: The last -- putting Frakes to the side,
25 the last guy there was Stewart, and that was in July.

1 MR. MCDERMITT: Okay.

2 HEARING OFFICER DOLLERIS: And I think Mr. Harrel, you
3 mentioned, in July did training on some safety things and
4 he was --

5 MR. STEPANIAK: Yes. That's correct. That would be
6 managerial as well.

7 HEARING OFFICER DOLLERIS: Okay.

8 MR. STEPANIAK: So -- but, yes --

9 HEARING OFFICER DOLLERIS: Okay.

10 MR. STEPANIAK: -- to Mr. -- to the Union's point,
11 Mr. McDermitt's point, other than Frakes, no one in six months.

12 HEARING OFFICER DOLLERIS: Okay. Is there anything
13 further either party would like to add?

14 Mr. McDermitt?

15 MR. MCDERMITT: I'd like to ask if they'd be providing
16 testimony of any of the Smithland employees that ever went to
17 Cannelton to work at the Cannelton facility?

18 MR. STEPANIAK: Yes, we would offer testimony to that,
19 that Smithland employees had been sent to Cannelton for a day
20 or so for training.

21 MR. MCDERMITT: For training?

22 MR. STEPANIAK: Well, they're there for a month because --
23 or excuse me, I misunderstood that. Yes.

24 MR. MCDERMITT: For training purposes?

25 MR. STEPANIAK: Yeah, training. As opposed to -- and I



1 don't know that they were sent there to actually operate
2 anything. But, right, while you're training, you know, you're
3 doing the work while you're training.

4 MR. MCDERMITT: And then one other question just as far as
5 clarification. How long has the Smithland facility been in
6 operation, and, in turn, how long has the Cannelton facility
7 been in operation?

8 MR. STEPANIAK: Yes. Operation, it began generating power
9 in -- I'm talking about Smithland -- in, I believe it was, May
10 of 2017. It was certified in commission a couple of months
11 after that. So it started generating power in May. It was
12 commissioned a couple of months later, I believe, is -- is the
13 representation. And then the Cannelton plant -- or facility is
14 three years.

15 HEARING OFFICER DOLLERIS: So there were Operator I and
16 Operator II employees at Smithland in about May of 2017,
17 starting then?

18 MR. STEPANIAK: Well, they were actually hired even before
19 generation began, some of them. Not -- I mean, they all have
20 different hire dates. Well, I wouldn't say all of them, but
21 some of them have different hire dates. We've hired some guys
22 as recently as January, for example. But yeah, they would have
23 been -- the first guy is 2016. Our generation began in the
24 spring of '17. So they would have been there during
25 construction and that sort of thing. Because you want to be

1 able to hit the ground running, as it were.

2 HEARING OFFICER DOLLERIS: Does either party have anything
3 further at this point about the offer of proof?

4 From the Employer?

5 MR. STEPANIAK: (No audible response)

6 HEARING OFFICER DOLLERIS: Mr. McDermitt?

7 MR. MCDERMITT: Not at this point.

8 MR. STEPANIAK: Is there any -- you might -- it's your
9 hearing, obviously. But I wonder if we haven't ironed out
10 those points of disagreement now. Are we in total agreement on
11 those facts, or is there still some point that would benefit
12 you to hear further information? It sounded to me like where
13 the Union quibbled with our proffer, we were able to resolve
14 that. For example, when --

15 HEARING OFFICER DOLLERIS: Because of the dates?

16 MR. STEPANIAK: Yeah, the dates, and that sort of stuff.
17 I'm guessing now we're probably at the point where there's not
18 much separation even on those facts.

19 HEARING OFFICER DOLLERIS: It sounds to me like we're --
20 we've never been far away on facts, I don't think. But I don't
21 want to say we. The parties have never been far away on facts.
22 So it seems like we're in the same place, that it's just --

23 MR. MCDERMITT: It --

24 HEARING OFFICER DOLLERIS: What the parties want to say as
25 to how it's worded, and what the parties don't want to say as



1 to how it's worded in the unit description, as far as
2 specifically excluding these people from Cannelton or wherever
3 else, and just leaving it open and bargaining about it, so --

4 MR. STEPANIAK: That is a -- you know, the prospect that
5 even the folks other than Frakes haven't been there in six
6 months, there's -- from our viewpoint, there's always the
7 possibility that that could occur again, even in the context of
8 an outage or in the context of superior knowledge at another
9 facilities.

10 And, you know, whether post-certification, and should the
11 Union win the election, whether that process would change or
12 should change, I think it could be left for another day. Our
13 point is, is that those people don't have community of interest
14 and they should be excluded from the unit. But because they
15 have been to Smithland and may be at Smithland again, that
16 shouldn't be left undecided by the Regional Director. It
17 should be dealt with now.

18 HEARING OFFICER DOLLERIS: Okay.

19 MR. MCDERMITT: And it's our position, basically, is
20 pretty much, I believe, as everyone has indicated. We are very
21 close; it's just a matter of whether or not that -- well, our
22 position is, is that our language is sufficient and that those
23 issues should be resolved at the bargaining table, should the
24 unit be certified, as opposed to being put into a stipulated
25 election agreement.

1 HEARING OFFICER DOLLERIS: Okay. So what I'd like to do
2 now is go off the record and discuss this with the Regional
3 Director and see where we're going to go, if anywhere, from
4 here after the offer of proof, so --

5 MR. STEPANIAK: Okay.

6 HEARING OFFICER DOLLERIS: Thank you.

7 Off the record.

8 (Off the record at 12:14 p.m.)

9 HEARING OFFICER DOLLERIS: The Regional Director has
10 decided that we will proceed with this hearing.

11 I mentioned before the petition to revoke, the Regional
12 Director referred the Employer's petition to revoke the
13 subpoena duces tecum to me. I am going to reserve that
14 decision until later in the hearing to determine the relevance
15 and some other issues raised in the petition to revoke.

16 MR. STEPANIAK: Okay.

17 HEARING OFFICER DOLLERIS: So please be aware that this
18 issue is one of excluding individuals from the unit
19 description. The burden of proof rests on the party asserting
20 the ineligibility to vote.

21 So, Employer, you must present specific detailed evidence
22 in support of your position. General conclusionary statements
23 by witnesses will not be sufficient.

24 So, Mr. Stepaniak, if you could please call your first
25 witness.

1 MR. STEPANIAK: We'll call Mr. Woodward.

2 HEARING OFFICER DOLLERIS: Please raise your right hand.

3 Whereupon,

4 **RON WOODWARD**

5 having been duly sworn, was called as a witness herein and was
6 examined and testified as follows:

7 HEARING OFFICER DOLLERIS: Thank you. Please be seated.

8 If you could state and spell your name for the record, please.

9 THE WITNESS: Ron Woodward.

10 HEARING OFFICER DOLLERIS: How do you spell --

11 THE WITNESS: R-O-N, W-O-O-D-W-A-R-D.

12 HEARING OFFICER DOLLERIS: Please.

13 **DIRECT EXAMINATION**

14 Q BY MR. STEPANIAK: Where are you employed, Mr. Woodward?

15 A American Municipal Power.

16 Q And what's your title?

17 A Director of Hydroelectric Operations.

18 Q And what would you briefly say would be your principal
19 duties?

20 A To ensure that the supervisors of operations and
21 maintenance at Cannelton and Smithland have everything
22 necessary to perform their duties.

23 Q Okay. Your responsibility, I take it then, covers both
24 the Smithland Dam and the Cannelton Dam?

25 A That's correct.



1 Q Any other facilities at AMP for which you have
2 responsibility?

3 A No.

4 Q You mentioned ensuring that supervisors have everything
5 they need to perform their duties. Is there presently a
6 supervisor at the Smithland facility?

7 A No, there is not. The supervisor retired the end of June,
8 and we're in the process of hiring a new supervisor.

9 Q When you say June, that was 2017?

10 A That's correct.

11 Q And do you spend any time at the Smithland facility?

12 A Yes. Since the supervisor retired, the majority of my
13 time is spent at the Smithland facility now.

14 Q Are you essentially functioning as the supervisor there?

15 A I'm performing his duties.

16 Q Do you continue to have responsibilities at the Cannelton
17 Dam facility?

18 A Yes, I do.

19 Q All right. And if you're spending your time mostly at
20 Smithland, how are you discharging those duties?

21 A Phone conversations, emails. Occasionally I'll spend one
22 day up there. I spend sometimes once a month. As a rule, we
23 go to Columbus for meetings.

24 Q Columbus, Ohio?

25 A That's correct. And --



1 Q When you say, "we," you mean just yourself and other
2 managers?

3 A That -- the supervisor of operations and maintenance at
4 Cannelton --

5 Q Oh, okay.

6 A -- also goes.

7 Q Thank you.

8 A And -- and I go.

9 Q Okay.

10 A From this area.

11 Q Can you tell us where the Cannelton Dam is located?

12 A It's located on the Kentucky side of the Cannelton Dam.
13 It's referred to as the Cannelton hydroelectric operations or
14 plant. It's closest town is Hawesville, Kentucky, which is
15 about five or six miles away.

16 Q From Cannelton?

17 A From the Cannelton hydroelectric project, yes.

18 Q Okay. And how far would you say the Cannelton Dam, where
19 you have employees, is from the Smithland facility, where you
20 have employees?

21 A I would say around 150 or '60 miles. In that range.

22 Q Okay. Do you know a fellow named Joe Frakes, F-R-A-K-E-S?

23 A Yes, I do.

24 Q And is he an employee of AMP?

25 A Yes, he is.



1 Q And does he report to you directly or indirectly?

2 A He in normal -- at the Cannelton facility, he reports to
3 Matt McDaniel (phonetic), the supervisor of operations and
4 maintenance. At the Smithland Dam project, he reports to me.

5 Q Okay. And what is Mr. Frakes' primary assignment in terms
6 of the location?

7 A At -- he is an Operator II. At the Cannelton facility,
8 he's an Operator II. He does all the -- performs all the
9 functions of an operator. He also, you know, assists in
10 troubleshooting things. At the Smithland facility, he is more
11 or less an assistant to me. He's performing duties that a
12 supervisor would normally -- would do, but he also -- an
13 operator will also do those duties on occasion. So he's -- he
14 troubleshoots items, he does training.

15 His primary responsibility is to assist and have an
16 excellent turnover to a supervisor when we actually get one
17 hired. He was initially brought down there to have a smooth
18 transition from the supervisor of maintenance and operation.
19 He was going to retire, so we got all the data from him on his
20 computer and so forth, and got that information before he
21 retired.

22 He's trained operators in Maximo -- or assisted in the
23 training of it, if they have issues, or whatever. He's also
24 assisted in training in LOTO, Redtag. He assisted Voith in
25 commissioning of the units there in the May and June area

1 there. They were still commissioning units. He's -- those are
2 basically the things that he's done.

3 Q All right. Is Mr. Frakes hourly paid or salary?

4 A He's hourly.

5 Q Okay. And you said that he's sort of assisting you in
6 some supervisory functions. Is Mr. Frakes a supervisor?

7 A No. No.

8 Q Is he a supervisor in Cannelton?

9 A No, he's not.

10 Q Is he a supervisor in Smithland?

11 A No.

12 Q Does he have the authority to hire new employees for
13 Smithland?

14 A No.

15 Q Fire employees at Smithland?

16 A No.

17 Q Issue them discipline?

18 A No.

19 Q Any performance evaluations on employees at --

20 A No.

21 Q -- Smithland?

22 HEARING OFFICER DOLLERIS: And, I'm sorry, did you say
23 he's hourly or salary?

24 THE WITNESS: He's hourly.

25 HEARING OFFICER DOLLERIS: Hourly. Thank you.



1 THE WITNESS: Okay.

2 Q BY MR. STEPANIAK: You told us about the kind of work that
3 Mr. Frakes has done in Smithland now. When did he
4 approximately begin his temporary assignment at Smithland?

5 A It was sometimes (sic) in May; whenever I was given the
6 information that the supervisor was retiring. He volunteered
7 to assist. He -- it was sometimes (sic) in May.

8 Q Okay. That's 2017?

9 A That's correct.

10 Q All right. And when was the Smithland Dam opened, and
11 when did it begin generation?

12 A It -- I don't have the exact dates.

13 Q Sure.

14 A It was sometimes (sic) in May. I don't know exactly, you
15 know, the --

16 Q That's all right.

17 A We pulled bulkheads in April. And that's when you allow
18 flow to go through. And so, you know, shortly after that you
19 would be generating something. As far as the actual --
20 actually date we put something to the grid, I don't -- I
21 don't -- I have it. I can get it. But I don't -- I don't have
22 it --

23 Q That --

24 A -- right --

25 Q That's all right.



1 A -- offhand.

2 Q When Mr. Frakes was first assigned to Smithland after
3 volunteering for that, how many days a week did he work at
4 Smithland?

5 A Five.

6 Q Okay. And during that five-day period, did he ever do
7 work that would otherwise be done by other operators, Is or
8 IIs?

9 A Yes. I mean, you know, any troubleshooting, you would
10 expect the operators to be able to do that. Like I say, he
11 assisted Voith in commissioning, and they also assisted Voith
12 in commissioning the -- just anything that -- let's say if, you
13 know, the operators were out of the control room, or whatever,
14 and he hit a button on the gate to open the gate, and that's
15 operator function. If something went down, he would certainly
16 discuss with them lessons learned at Cannelton, or whatever.
17 And he may -- may actually do some physical work.

18 I mean, there's issues we've had where units won't start
19 up and they -- he -- he would go out and whittle a PROFIBUS
20 or -- and, you know, that's something an operator would do from
21 a troubleshooting standpoint.

22 So he performed operator functions also, but he wasn't
23 assigned to do operator functions. He wasn't scheduled to do
24 those. He wasn't put on a shift to do operator work on that
25 shift.

- 1 Q He wasn't covering a shift --
- 2 A No.
- 3 Q -- as an operator?
- 4 A No.
- 5 Q Okay. Did he go home then for the weekend?
- 6 A Yes, he did.
- 7 Q So where did he stay while he was at --
- 8 A At Homewood Suites.
- 9 Q Okay. And the Company paid for that?
- 10 A Yes, they did.
- 11 Q All right. Does the Company pay for hotels for any of the
- 12 eight operators at Smithland?
- 13 A No. Well, when the operators went to training at
- 14 Cannelton for that month, then their -- they were -- expenses
- 15 were paid.
- 16 Q Okay. Did Mr. Frakes have use of a Company vehicle to get
- 17 to and from his home?
- 18 A There -- there was a vehicle that he was able to use to go
- 19 from Cannelton to Smithland.
- 20 Q Okay. Did the frequency of Mr. Frakes' assignment work at
- 21 Smithland change at some point?
- 22 A Yes. At one point he had an injury, and he was off -- he
- 23 tore a muscle in his arm and had surgery. And so he was off
- 24 during that time. And then sometimes (sic) in October, he went
- 25 from five days a week to one day a week.

1 Q Okay. Do you know how he tore the muscle in his arm?

2 A Mud -- mudding, you might could call it. Those obstacle
3 courses.

4 Q Oh, off duty? It wasn't a work --

5 A Oh, no.

6 Q -- work injury?

7 A Not --

8 Q Okay.

9 A -- work. It was --

10 Q So then you say in October he went down to one day a week.
11 What was his primary responsibility then?

12 A It was -- it was the same thing. It didn't change. It
13 was just one day a week. The -- originally when we had -- he
14 volunteered, this was like a six-week to eight-week change, you
15 know, because we were -- we thought we had a supervisor hired.
16 The offer was made. It didn't work out. So we had to go
17 through the process again. And we're in the process right now,
18 and hopefully we'll have one hired here in the next two or
19 three weeks.

20 Q Okay. So when he reduced his schedule in Smithland to one
21 day a week, I take it he was spending the other four days a
22 week in Cannelton as --

23 A That's correct.

24 Q -- an operator? And when he was working one day a week in
25 Smithland, you told us he was essentially doing the same thing.



1 Would that include on occasion doing operator work in
2 Smithland?

3 A Yes. But mainly it was the same thing as checking our --
4 the paperwork we've got, you know, taking care of all -- say
5 these bills were -- yeah, we -- we received that work, or
6 whatever. It was mainly -- I don't want to say administrative,
7 but it actually was a lot of administrative.

8 And then if there were any issues that we had that needed
9 to be resolved or lessons learned or training or -- and I guess
10 you can call it training whenever you go out and you say, hey,
11 this is what happened in Cannelton, or whatever. That -- to
12 me, that's -- that's training. But he would still maybe do
13 physical work too. He may go out and whittle a PROFIBUS or go
14 out and open a cabinet to see if something was the way it was
15 supposed to be.

16 Q Okay. And that was when he was -- also true when he was
17 working the one day a week schedule?

18 A Yes.

19 Q Okay. You know when -- the last time Mr. Frakes performed
20 this kind of work at the Smithland facility?

21 A I -- I don't have the exact date. Like I said, it was
22 Wednesday, two to three weeks ago.

23 Q Okay. Sometime in January of 2018?

24 A Yes.

25 Q Now, since the Smithland project had got underway, have



1 you sent other -- or has the Company sent other Cannelton
2 operators to Smithland for any purpose?

3 A Yes. We -- we've sent them for -- other gentlemen down
4 there for training purposes. Paul Haycraft, he came down in --
5 in April to remove bulkheads, training on bulkheads. He spent
6 I think two days there doing that. And Jonathan Woosley, he
7 was down in April also working on the PLC on our track rake.
8 It was supposed to be upgraded. They determined that it
9 wasn't -- we could not upgrade it because it was a different
10 program than we had at Cannelton. And --

11 Q Would -- upgrading computer logics on the trash rake would
12 be something that an operator would do? Is that operator work
13 or is it some other kind --

14 A Certain operators would be able to do it.

15 Q Okay.

16 A All of them will not be able to do it. We probably have
17 two to -- two people at Smithland that will be capable of doing
18 that, not -- with additional training and so forth.

19 Q So --

20 A And --

21 Q I mean, is this the kind of work Woosley does in
22 Cannelton --

23 A Yes.

24 Q -- as an operator?

25 A Yes.



1 Q All right. I'm sorry. I interrupted you. Was there
2 anyone else besides Haycraft and Woosley?

3 A Josh Stewart was there for approximately four days in June
4 and July. And he did LOTO training, Redtag Pro training. And
5 these are our lockout-tagout procedures. He handles that in
6 Cannelton -- or he's the primary one that handles it.
7 Everybody handles it to a certain extent. And he came down to
8 work with that when Smithland went through this.

9 Q All right. Anyone else you can think that came down from
10 Cannelton?

11 A I think that we got --

12 Q You mentioned --

13 A Brandon Harrel.

14 Q Yeah. Thank you.

15 A And he was down for four days, a total of four days, in
16 2017. And he was there in March. And then he was there again
17 in July. And he basically did training on the trash rake. And
18 he also was involved with setting up our SDS program, which is
19 chemical control. Any chemical that comes in the facility has
20 to have a safety data sheet on it. He also evaluated exactly
21 where the fire stinguish -- fire extinguishers were to be
22 located. And that was his function. There were training
23 functions, and he --

24 Q Okay. The fellows you've just mentioned, Haycraft,
25 Stewart, Harrel and Woosley, in Cannelton what job

1 classifications do they ultimately perform?

2 A Well, Harrel is a I and Haycraft may be a I or II. I
3 think he's a II now. He's a II. And Jonathan's a II. And
4 Josh Stewart's a II.

5 Q Okay. So regardless if it's I or II, they're all -- they
6 all hold the operator classification --

7 A That's correct.

8 Q -- in Cannelton? They're all hourly paid employees?

9 A That's correct.

10 Q Have you yourself performed operator work in Smithland
11 on -- at any time?

12 A Yes, I have.

13 Q What kind of stuff have you done?

14 A I've run a forward tractor moving snow, I've run a snow
15 blower blowing snow off, running an overhead crane moving
16 bulkheads, running fork track, the truck, picking up logs, run
17 a chainsaw cutting logs --

18 Q These are --

19 A -- and a log grabber --

20 Q These --

21 A -- pulling logs out of the river.

22 Q I'm sorry. These would be things that operators would do?
23 But --

24 A Yeah. They do, yeah.

25 Q But when the need arises, whoever happens to be there from



1 Cannelton or wherever pitches in --

2 A Correct.

3 Q -- and does these things? Okay.

4 MR. STEPANIAK: That's all the testimony I have for
5 Mr. Woodson (sic).

6 HEARING OFFICER DOLLERIS: Mr. McDermitt, or,
7 Mr. Donathan?

8 **CROSS-EXAMINATION**

9 Q BY MR. MCDERMITT: Mr. Woodward, thank you for your time
10 today. I appreciate that. Just a few questions for you.

11 Now that Smithland's been operational for an extended
12 period of time, can you describe for us some instances where
13 there may be a need for operators from Cannelton to come down
14 to Smithland?

15 A If there is a controls issue that needs the expertise or
16 the experience, then we would -- we would send somebody down if
17 we couldn't resolve it on the phone. But it would be certain
18 people on the certain instances. As far as, you know, somebody
19 getting sick, or whatever, and they can't make their shift,
20 we've been able to go through all the flu and everything that's
21 happened. We've had people that had personal issues that they
22 had to take care of and so forth. And we haven't brought any
23 operator down to fill a scheduled shift.

24 Q And did I understand your testimony correctly that in most
25 instances, that I heard, they came down from Cannelton early on



1 in the operation of the Smithland facility to assist in
2 training the operators at the Smithland facility?

3 A That's correct.

4 Q Once the operators at the Smithland facility have an
5 understanding of what the situation or circumstances that may
6 have called the folks down from Cannelton, is there -- or is it
7 typical for -- or is there a need for you to continue to call
8 them down?

9 A No. And nobody from Cannelton wants to come down to --
10 unless they do. But we give them -- we say, hey, we need your
11 assistant (sic), we need some more training on this, or
12 whatever, then they will come down. But it's not my intent to
13 bring anybody down from Cannelton if it's not required.

14 Q All right.

15 A You know, we're in our infant stages down there right now.
16 You know, we're -- we're actually six, seven months in
17 operation. So, you know, I -- I get the picture of the way
18 things are in Cannelton in three years, and I say, hey,
19 we're -- we're going to get to where we (sic) are in three
20 years; we're just not there yet.

21 Q Okay. When you describe Mr. Joe Frakes, is my
22 understanding correct he started in May, about the same time
23 that the other supervisor retired from --

24 A The --

25 Q -- Smithland?

1 A The supervisor retired on June 30th. We tried to get
2 ahead of the gun so that there wouldn't be a new supervisor
3 coming in and we didn't have everything set up for him. So
4 the -- Joe's -- his primary goal was to make sure that all the
5 information that the retiring supervisor had was readily
6 available for the new supervisor.

7 Q And what type of information would that have been that
8 he --

9 A It's where -- where he keeps all his files, where he
10 keeps his records. And that's basically where he -- how he
11 files paperwork that he's received. And the -- the supervisor
12 had been for four or five years. And so he had a lot of data
13 on his computer, and Joe was going to determine exactly where
14 all of it was so that, like I say, we'd have a smooth
15 transition.

16 Q And the supervisor that retired, I mean, as far as his
17 duties and responsibilities, what did that encompass?

18 A I don't have the whole list in front of me, but he was
19 responsible for all the operators, all their functions,
20 scheduling, and making sure they had everything that they
21 needed, the training that they needed, responsible for the
22 takeover of materials from construction, the spare parts and so
23 forth. Again, I don't have the list of all the -- the duties
24 that he's got, but he is basically in charge of that site and
25 the -- the site to function correctly.

1 Q Did he have the authority to call people in for -- you
2 know, when -- did the operators call in sick to him?

3 A That's correct.

4 Q And did he have the authority to, in turn, call in and
5 decide who he would call in to replace those employees that had
6 called in sick?

7 A Correct.

8 Q Did he participate in the evaluation of those operators?

9 A He was responsible, yes. We have a -- a way that we do
10 our evaluation. Yes, he was -- he was responsible for that.

11 Q And my understanding is that you're currently filling in
12 for him?

13 A That's correct. I'm assuming his duties.

14 Q And you're there how many days a week fulfilling those
15 duties?

16 A Well, in January, I was there probably 21 days straight
17 through the weekend on the job, because of issues we had with
18 weather and so forth. So I'm there five days a week.

19 Q Are you there -- well, did I understand correctly that
20 Mr. Frakes fills in for you when you're not there?

21 A No. He -- he doesn't fill in for me as far as directing
22 the people exactly what to do or their schedule or reschedule
23 them, he doesn't do that.

24 Q So if there's an instance when you're not there, what's
25 the procedure for handling those situations that you would



1 normally make decisions or --

2 A If someone's not going to be there, they give me a call.
3 And in some instances, an operator, if he's going to be gone,
4 he'll call another operator, and they may trade shifts, or
5 whatever. That's happened before. If somebody's sick, they
6 call -- usually they call their -- whoever their shift mate is,
7 or whatever you it, they usually are aware of it. They
8 don't -- that's not in the protocol for them to call them, but
9 it's to make we aware of it so that I can make arrangements to
10 have somebody taking care of it. In a lot of instances,
11 they'd -- they've taken care of it already.

12 Q And you mentioned some of the clerical paperwork and
13 administrative functions --

14 A Yeah.

15 Q -- that Mr. Frakes -- could you -- takes care of when he's
16 there on site. Could you elaborate on what those clerical
17 duties --

18 A Okay.

19 Q -- are?

20 A It's like Maximo, if we have issues with everybody
21 can't -- for some reason if we have issues with -- we have a
22 work order and then it goes to a purchase requisition and then
23 that purchase -- we have a lot of issues sometimes with the
24 guys not being able to get the -- the PR written directly, or
25 whatever. So he goes back and he works that. Then he sends



1 the PR on to me, and then depending on the amount, I'll approve
2 it for a purchase and then I'll make the purchase. Or, in some
3 instances, he may go ahead and type in the purchase and I'll
4 approve it.

5 Q And the PR is purchase request?

6 A Yeah, the purchase request. And it comes to me and I -- I
7 approve it. And that's -- that's part of it that -- that he
8 would do. That's usually something relative or regular. PMs
9 that -- that are supposed to be done, he evaluates those on
10 occasion, and we discuss PMs and how we can approve on those.
11 Those are -- are daily things. PMs come up daily. Maximo on a
12 daily function, so --

13 Q Could you elaborate on what Maximo and PM --

14 A I --

15 Q -- are?

16 A Maximo is our -- the way we keep track of maintenance.
17 And PM is preventative maintenance items that they do. And
18 they'll sometimes, you know, two or three, or there may be 15
19 that pop up. That's cleaning floors, cleaning rest rooms, and
20 cleaning the rec area, check the highlit (phonetic) pressure
21 pumps for air lock, check the oil here, check the oil there,
22 and just the -- the things that you have to do. That's what
23 Maximo is, and then, again, it's part of our history of items,
24 our history for things that we've purchased and so forth. And
25 we're still developing on -- on that.

1 Q Is there any time when you're there at the Smithland
2 facility that Mr. Rakes (sic) is there, or is he basically
3 there when you're not available?

4 A I'm -- I'm there -- he's not there to -- to replace me, or
5 whatever. He's there to assist me. And so 90 percent -- I
6 would say 90 percent of the time or better, we're there at the
7 same time. I'm there more than Joe is there.

8 Q Does Mr. Rakes (sic) make entry into the operator books?

9 A I -- I don't know, as a -- as a rule. If he has, it --
10 it's not a normal thing that he does. The operators, they make
11 several entries into the operator book. I'm not -- I'm not
12 aware -- I can't say one way or the other if he has. But
13 it's --

14 HEARING OFFICER DOLLERIS: Can you tell me what that
15 means, an entry into the operator book?

16 THE WITNESS: We have a daily log that's -- I assume the
17 logbooks is what you're --

18 MR. MCDERMITT: Yes.

19 THE WITNESS: -- talking about.

20 MR. MCDERMITT: Yes.

21 THE WITNESS: We have a daily logbook and they've got to
22 stamp in the -- when they do it, you know, they have a -- an
23 issue with the generation, or whatever, they -- they note this
24 in. If there's something specific that happens to a piece of
25 equipment, or whatever, they'll note that. It's just a -- a

1 daily log. And each shift does that.

2 HEARING OFFICER DOLLERIS: Thank you.

3 Q BY MR. MCDERMITT: So just to make sure I understand, so
4 basically when they do operator functions, level I or level II,
5 or some sort of adjustment to the actual unit itself, then
6 they'll put those entries into the logbook?

7 A I -- that's --

8 Q Is that the protocol? I'm sorry for --

9 A That's --

10 Q -- interrupting you.

11 A -- pretty much -- you know, the specific things that need
12 to be passed on and things of record, they put in the logbook.

13 Q So when he's performing as an operator at Cannelton, does
14 he put entries into the logbook at Cannelton?

15 A I'm -- I'm sure he does. The -- and the way the guys -- I
16 think the way the guys operate at Smithland, one guy on -- one
17 day he'll -- he'll perform most of the duties in the control
18 room, which would be putting everything in the logbook, and
19 then the next day, they switch around. That's my
20 understanding. That may not be totally correct, but that's my
21 understanding how they operate.

22 Q Thank you, Mr. Woodward. That's all the questions I have
23 at this time.

24 MR. STEPANIAK: Just very few follow-up, unless you want
25 to get in.

1 HEARING OFFICER DOLLERIS: Yeah, let me go ahead and get
2 in --

3 MR. STEPANIAK: Okay.

4 HEARING OFFICER DOLLERIS: -- and then you can follow
5 up --

6 MR. STEPANIAK: Sure.

7 HEARING OFFICER DOLLERIS: -- on both. Okay.

8 Could you please tell us, Mr. Woodward, just generally
9 what operators I and II do?

10 THE WITNESS: Well, they operate. They --

11 HEARING OFFICER DOLLERIS: Thank you.

12 THE WITNESS: They have a -- they have a wide range of
13 functions. You know, when we hire them, we go in, and one of
14 the lines that usually is said, that, you know, you're --
15 you're going to be working on computer stuff, on occasion
16 you'll be working on mechanical, on fixing equipment, you'll be
17 sitting in the control room, operating from the control room,
18 you'll be cleaning rest rooms one day, you'll be closing the
19 rec area another day. It's, you know, varied things. They're
20 on a 12-hour shift. So, you know, they -- there's quite a bit
21 that -- that they can do, so --

22 But basically their primary function is to make sure that
23 the generators operate at maximum efficiency and in as safe a
24 manner as possible. So safety first, generation second.
25 And -- and they all have the authority to shut a unit down if

1 it needs to be shut down for a safety reason or personal
2 safety, or safety of the equipment, they go on teardown. They
3 all have the authority to do that. So that -- that's probably
4 their -- their -- the -- I guess I would say, the highest
5 importance thing they've got to do.

6 HEARING OFFICER DOLLERIS: Okay.

7 THE WITNESS: To stay safe, run the unit safely, and go
8 from there.

9 And then the other things, you've got to clean the floors,
10 you've got to grease items, you've got to filter the oil,
11 you've got to look and make sure that nothing is changing. So
12 they -- they make rounds every day and they look at, you know,
13 readings. And hopefully they develop a sense that, you know,
14 this reading isn't quite right. And why is it not quite right?
15 Even though they have -- we have a state of the -- state of the
16 art controls in our control room and they have a lot of alarms
17 and stuff, but they still rely on those guys to sit there and
18 listen to these things run and say, hey, it sounds a little
19 different. A basketball just went through the generator, you
20 know, or something. You know, it's -- so they've -- it's --
21 it's a very broad spectrum of what they're doing, so --

22 HEARING OFFICER DOLLERIS: And when you say they make
23 rounds looking at readings, that's within the plant or the
24 facility?

25 THE WITNESS: Within the powerhouse.



1 HEARING OFFICER DOLLERIS: Okay.

2 THE WITNESS: And, yes, they -- but they go outside the
3 powerhouse and they do -- like I said, we have control of the
4 recreational area up there. So they make -- they make a round
5 up there.

6 HEARING OFFICER DOLLERIS: Okay. So their job is either
7 primarily or exclusively located at the facility? They don't
8 go --

9 THE WITNESS: That correct.

10 HEARING OFFICER DOLLERIS: Okay. Great. And what would
11 be the difference between an Operator I and an Operator II?

12 THE WITNESS: There's -- there's very little difference in
13 their duties. The -- usually the separation when they're hired
14 is, who has the most experience in a certain area.

15 HEARING OFFICER DOLLERIS: And the II generally has more
16 experience?

17 THE WITNESS: That's correct. Or it's, they've got
18 extensive electrical experience or electronic experience, and,
19 you know, they may be -- and if they have operator experience,
20 then it -- you know, it usually allows them to be an Operator
21 II.

22 HEARING OFFICER DOLLERIS: Okay. This is probably already
23 on the record, but I'll just get it -- get all this in one
24 place. Is Mr. Frakes currently working at Smithland?

25 THE WITNESS: No, he's not.

1 HEARING OFFICER DOLLERIS: Okay. Is Mr. Woosley?

2 THE WITNESS: No.

3 HEARING OFFICER DOLLERIS: Is Mr. Haycraft?

4 THE WITNESS: No.

5 HEARING OFFICER DOLLERIS: Mr. Stewart?

6 THE WITNESS: No.

7 HEARING OFFICER DOLLERIS: Mr. Harrel?

8 THE WITNESS: No.

9 HEARING OFFICER DOLLERIS: Okay. Are any of those people
10 that I just said, are there any plans to have them come back to
11 Smithland -- any scheduled plans to have them come back to --

12 THE WITNESS: No.

13 HEARING OFFICER DOLLERIS: -- Smithland?

14 THE WITNESS: No, there are not.

15 HEARING OFFICER DOLLERIS: How about, is there anyone else
16 from Cannelton or any other facility currently at Smithland?

17 THE WITNESS: No.

18 HEARING OFFICER DOLLERIS: Are there any plans or
19 scheduled plans to have anyone else from Cannelton or anyone
20 else -- anywhere else come to Smithland?

21 THE WITNESS: No.

22 HEARING OFFICER DOLLERIS: Okay. I want to talk a little
23 bit about Mr. Frakes in particular. So we have some testimony
24 that he performs the clerical duties and the administrative
25 duties, as you've discussed, and also some unit work. So I'm

1 going to call it bargaining unit work --

2 THE WITNESS: Okay.

3 HEARING OFFICER DOLLERIS: -- the things that operators I
4 and II perform. Can you estimate about how much time he spends
5 performing the unit work versus the non-unit work?

6 THE WITNESS: Well, it -- not really. Probably I'd say
7 it's 50/50. That would probably be a good estimate because,
8 you know, if you -- you're doing just work in the office and
9 then you get up and you walk around, you walk around outside
10 looking at stuff, actually that's operator work. But, again,
11 it's -- you may not do anything other than walk around and look
12 at something. So I'd say 50/50 would be fair, you know. Some
13 days he may spend most of his time -- if there's a
14 troubleshooting instance, then, you know, obviously, what help
15 I need in the office is secondary to getting the units running
16 again.

17 HEARING OFFICER DOLLERIS: And, I'm sorry, I think we're
18 both speaking in present tense. But he's not there anymore.
19 So we're --

20 THE WITNESS: That's correct.

21 HEARING OFFICER DOLLERIS: I think we're talking more
22 about -- I did it too. Okay.

23 THE WITNESS: Yeah. Kentucky, you know. I may not get
24 the tense right.

25 HEARING OFFICER DOLLERIS: Okay. How are the -- moving



1 away from Frakes. How are the people assigned -- how are the
2 eight Operator Is and IIs assigned what they're going to do
3 that day?

4 THE WITNESS: Well, they -- they would go back to Maximo
5 and the -- they -- they've got their normal duties that they --
6 they have to do every day. They have to do their rounds every
7 day. The Maximo pops up the PM list, the preventative
8 maintenance list, and then they try to do what they can do on
9 that preventative maintenance. Sometimes they may not have the
10 skill, or whatever, and it's passed on. But that's the
11 addition of what they need to do. Then there's also -- if I
12 see something that specifically needs to be done, then I'll
13 point out that we need to do this.

14 And -- and realize that the -- the supervisor of
15 operations and maintenance as a rule is, you know, a
16 five-day-a-week job and they're -- they won't -- they're not
17 out there on Saturday or Sunday unless there's an issue. So
18 the -- we rely heavily on the operators to make judgment
19 decisions. And, on occasion, if there's an issue, I will get a
20 call and say, this happened. What do you -- what do you want
21 us to do about it? Or -- or, we're going to do this about.
22 Or, you know, it's communication.

23 HEARING OFFICER DOLLERIS: Okay. Thank you.

24 If Mr. -- back when Mr. Frakes was at the Smithland
25 facility, if he was performing bargaining unit work, who would

1 be supervising him doing that work?

2 THE WITNESS: He's probably the most experienced -- well,
3 I mean, obviously, it would be me.

4 HEARING OFFICER DOLLERIS: Okay. And he's an Operator II
5 and he's hourly. Is that wage similar for all Operator IIs?

6 THE WITNESS: It's similar.

7 HEARING OFFICER DOLLERIS: Similar. Okay. And when he's
8 performing bargaining unit work, he's at the facility or
9 walking around the facility like the other Operator IIs; is
10 that correct? When Mr. Frakes --

11 THE WITNESS: Can you --

12 HEARING OFFICER DOLLERIS: -- was performing bargaining
13 unit work, he'd be doing it alongside the Operator IIs?

14 THE WITNESS: He could be. He could be with them or he
15 could, you know, see an issue and run out and take care of it
16 himself real fast, you know. But, as a rule, you know, that
17 would be communicated to the operators what was done so they
18 know. You know, we want everybody to take ownership of the --
19 the facility. So we try to communicate. And on occasion, it
20 may not happen, but, as a rule, that's -- that's what I would
21 want to happen.

22 HEARING OFFICER DOLLERIS: So we know there are eight
23 operators at Smithland. How many are at Cannelton?

24 THE WITNESS: Eight.

25 HEARING OFFICER DOLLERIS: Including Mr. Frakes?



1 THE WITNESS: That's correct.

2 HEARING OFFICER DOLLERIS: Where is the next closest
3 facility to Smithland?

4 THE WITNESS: Meldahl, which is at Maysville, Kentucky, up
5 above and around Cincinnati, in that area there. You would go
6 through Louisville and then take a right at Cincinnati and go
7 up Bridgeville.

8 HEARING OFFICER DOLLERIS: All right. So a few hours
9 maybe?

10 THE WITNESS: It -- from Smithland?

11 HEARING OFFICER DOLLERIS: Yes.

12 THE WITNESS: It would be -- what, Smithland is three
13 hours from Louisville, and it's an hour-and-a-half. So it
14 would probably be five-and-a-half hours these lads may have
15 traveled. I don't know. But it's around five-and-a-half
16 hours, I would guess.

17 HEARING OFFICER DOLLERIS: Who is the supervisor at
18 Cannelton?

19 THE WITNESS: Matt McDaniel.

20 HEARING OFFICER DOLLERIS: And he's not one of the ones we
21 talked about? He's never been to Smithland?

22 THE WITNESS: He's been there, but not --

23 HEARING OFFICER DOLLERIS: Well, he's never worked at
24 Smithland?

25 THE WITNESS: He's not worked at Smithland. He came down



1 when the -- the trash rake training went on, because there was
2 an issue with the -- the vendor for that unit. So he was more
3 or less observing.

4 HEARING OFFICER DOLLERIS: Okay. That's all I have for
5 now.

6 MR. STEPANIAK: Yeah. I just have very few.

7 **REDIRECT EXAMINATION**

8 Q BY MR. STEPANIAK: Are you familiar with the term outage?

9 A Yes, I am.

10 Q What's an outage?

11 A That's when you -- say you've got three units. If one
12 unit is down and we're doing some specific work, that would be
13 an outage on that unit where you're doing maintenance on that
14 unit.

15 Q Okay. In the event of an outage, does AMP ever, you know,
16 refigure its scheduling? Does it ever have any impact on where
17 it sends people or how it's scheduled?

18 A Of course, we -- whenever we schedule an outage, down time
19 is critical. We want to have a minimum amount of down time.
20 Usually if someone at one of the other facilities have -- had
21 done this work, then if somebody will volunteer or wants to,
22 they will send them down there to assist. We've had Cannelton
23 operators go to one of the other facilities up river because --
24 to assist them in -- in an outage. But it's not something
25 that's normally done to -- on a small outage. This would be a

1 major outage that you're talking about.

2 Q You haven't had one of those in Smithland yet?

3 A No. No. Our biggest outage perhaps to be an 8,000 hour.
4 When we've got units online for 8,000 hours, then we have a
5 contractual obligation to shut them down, check for cavitation
6 and so forth. And -- well, the work that's listed for that, a
7 lot of times we get it done beforehand. If we are down for any
8 reason, we'll go in and do certain checks, change filters,
9 things of this nature, that are on that 8,000-hour outage, to
10 shorten the time of an outage.

11 Q Okay. That should be -- perfect.

12 MR. STEPANIAK: That's all.

13 HEARING OFFICER DOLLERIS: Mr. McDermitt?

14 **RECROSS-EXAMINATION**

15 Q BY MR. MCDERMITT: You mentioned an 8,000-hour outage.
16 How many hours were on, do you know, approximately on the -- on
17 the Smithland unit?

18 A The -- it -- it'll happen sometimes (sic) this year. I
19 don't know the exact hours right now. There's a tentative
20 schedule. It will be -- I'm just guessing right now. It will
21 probably be in the fourth quarter of the year. We -- we -- you
22 know, we're -- contractually, we're obligated to do it at a --
23 at the 8,000 hours, but we also negotiate with the vendor and
24 sometimes we'll adjust it accordingly to try to put it into an
25 area where there's a minimum amount of loss in generation.



1 Q And did I understand correct that some of that may be
2 taken care of through the course of on planned outages or --

3 A Right. And --

4 Q -- routine maintenance?

5 A And the operators -- yes, that's correct. And the
6 operators -- Smithland operators will do this work.

7 Q To go back to the logbook a little bit, would taking
8 readings from the unit, would that be an operator function?

9 A Taking -- yeah, readings, that's -- they -- they do that
10 when they do their rounds. And they have a -- a sheet of all
11 the things that they write down on the report.

12 Q And is that something they would enter the logbook when
13 they took those readings?

14 A The sheet would be maintained, but I don't think they
15 enter it in there. I -- they'll have to answer that question
16 for you. Again, I'm not an operator.

17 Q Okay. And then as far as adjusting the units --

18 A That's the -- that's -- they do that. You know, they --
19 they have what you call a bell curve or a chart there that has
20 the most efficient operation of the unit. And it's dependent
21 on the flow and differential head and so forth. And they look
22 at it and they'll take all three units and they'll evaluate
23 what the flow is, and then they'll determine if it will make
24 more if we raise the flow on two units and drop it on one. But
25 each unit's got its own characteristic. And they know how to

1 look at it and evaluate where their best generation is.

2 Q And is that something that they -- if they made those
3 adjustments, they would put in the logbook?

4 A They -- you know, I don't know. I don't know exactly if
5 they -- they make that -- if that goes in the logbook. But if
6 they lose a unit -- I see a head shaking in the back, so, yes,
7 they do make those adjustments.

8 Q Okay. I won't burden the record with the rest of these,
9 and I'll just ask -- ask the operators then, if I'm
10 understanding correct. Basically I'm looking at what you would
11 be putting in that logbook that would sort of distinguish an
12 operator, to some extent. And I realize -- well, I shouldn't
13 go there. But I'll save those questions for the operator.

14 One final question, if they hire a supervisor at the
15 Smithland facility, will there be a need for Mr. Frakes to
16 assist you with those clerical and administrative duties
17 anymore?

18 A I know they're going to answer my prayers and they will
19 have an off-the-record (phonetic) supervisor there. And the --
20 once we get a supervisor, then I will be down there maybe two
21 to three days a week. The supervisor will take care of most of
22 their -- after he's -- he has to go through some training too.
23 And they -- the operators will assist in training the
24 supervisor in some, you know, special things about our units,
25 because if we hire somebody that has hydro experience, or

1 whatever, they've -- they know a lot of what the supervisor is
2 supposed to be doing, but they won't know the specifics of
3 these units here.

4 So as far as training is concerned, we -- we may send the
5 supervisor to Cannelton to look at some of the ways that Matt
6 does his work up there. And we may have Joe come down here
7 to -- well, we probably will have Joe come down to show him
8 exactly where everything is, which was his primary duty when he
9 came down initially, was to make sure there was a smooth
10 transition. So he'll probably be down there, you know, again,
11 you know, one or two days a week, or whatever, to get him
12 oriented and set in.

13 But a lot of the stuff can be handled on the phone. And
14 he will not be down there any more than what's required to make
15 sure this guy's got all the information that he needs.

16 Q And then I've misstated myself. I have one more question.
17 You discussed outages there a little bit. Do you periodically
18 hire -- could you, would you possibly hire subcontractors for
19 some of those -- some of that outage work?

20 A Yes, we would. And we will. Because there's specialty
21 items that we don't expect the operators to know how to do, and
22 they don't have the equipment to do it. So we will have
23 contractors. Plus we -- you know, we've only got eight guys.
24 There's two on a shift. The outage may just be for one unit.
25 So we still have the operators' duties on the other two units.



1 So we will have contractors involved.

2 Q When Mr. Frakes was there at the facility, what schedule
3 did he work?

4 A He would drive down on Mondays. So he would get there
5 anywhere from 7:00 to 8:00. In that range. He would leave on
6 Fridays. Usually he tried to leave early. So it was sometimes
7 early afternoon, 2:00, 3:00, as a rule.

8 Q Was it a 12-hour shift that he was --

9 A Oh, no.

10 Q -- working while he was there?

11 A No. Well, I don't -- he worked more than eight, but as to
12 when -- it wasn't scheduled as such. I don't know exactly what
13 his hours were. But he didn't work a 12-hour shift, no.

14 Q And what shift do the operators at the Smithland facility
15 work?

16 A They work a 12-hour shift. 7:00 to 7:00. 7:00 to 7:00.

17 MR. MCDERMITT: That's all the questions I have.

18 HEARING OFFICER DOLLERIS: What do you work when you're at
19 Smithland? Are you --

20 THE WITNESS: Well --

21 HEARING OFFICER DOLLERIS: -- a 12-hour shift?

22 THE WITNESS: It -- they can kind of answer it for you.

23 But usually I see the -- the second shift coming on at 7:00.

24 And I get there anywhere from -- as a rule, it's between 7:00
25 and 7:30.



1 HEARING OFFICER DOLLERIS: Okay. So often 12 hours, 12 --

2 THE WITNESS: Yes. Yes.

3 HEARING OFFICER DOLLERIS: Okay. And do the -- do the
4 operators in Cannelton use the same Maximo and PM system?

5 THE WITNESS: Yes, they do.

6 HEARING OFFICER DOLLERIS: Do the operators in Smithland
7 and Cannelton have access to each other's PM schedules?

8 THE WITNESS: No. No, but they're very -- Smithland's PMs
9 are generated off of Cannelton's. So there may be some
10 variance. But the majority of it is the same ones we have at
11 Cannelton.

12 HEARING OFFICER DOLLERIS: And is this operator logbook a
13 physical book or it's on the computer?

14 THE WITNESS: No. It's a physical book.

15 HEARING OFFICER DOLLERIS: When the other -- when the
16 operators from Cannelton were going to Smithland, such as
17 Mr. Woosley and Stewart, who did they report to?

18 THE WITNESS: Well, it would be me. I mean, they --
19 they, you know, had their specific tasks they were going to do,
20 and -- and then they may show up and not say anything to me at
21 all; just go out there and get their work done, or whatever
22 their task was going to do.

23 Paul Haycraft, he was -- I was giving him directions
24 because that was a very critical issue. We had all these
25 bulkheads -- bulkheads are normally 60,000 -- or 60 tons, and

1 when they're -- they've been in there for a year or two, or
2 whatever they were in there, they're up to 120 tons, and
3 there's a lot of engineering that -- or, you know, that has to
4 be done correctly, rigging and so forth. And he had gone
5 through that process. So he -- he reported to me. And so did
6 Harrel and Josh. But yet they -- I wouldn't say they reported
7 to me. If they had an issue, then they'd talk to me. But
8 they'd come in and then directly they'd go right with the
9 operators and start talking with the operators on -- on the
10 issues on LOTO and help them out with LOTO and the Redtag Pro,
11 so --

12 HEARING OFFICER DOLLERIS: And, I'm sorry, who was the
13 supervisor at Cannelton? Is it Josh?

14 THE WITNESS: Matt McDaniel.

15 HEARING OFFICER DOLLERIS: Matt McDaniel. Excuse me. And
16 does he report to you?

17 THE WITNESS: Yes, he does.

18 HEARING OFFICER DOLLERIS: When the employees came to
19 Smithland from Cannelton, how did they clock in, or how did
20 they know when to start their day?

21 THE WITNESS: They -- they start their day -- we pay their
22 travel time down there to travel time back. So they have ADP,
23 which they have cell phones and they bunch their time in on
24 their cell phones.

25 HEARING OFFICER DOLLERIS: And how do employees on a



1 day-to-day basis at Smithland clock in, if they do?

2 THE WITNESS: They punch their time in on their cell
3 phones or they punch them in on the computer, so --

4 HEARING OFFICER DOLLERIS: Gotcha. And how does -- how do
5 employees know which round or which shift they're assigned to?

6 THE WITNESS: We have a printout that notes -- right now
7 it goes through 2019 on the board up there. And I guarantee
8 you they know probably a year ahead of time whenever they're
9 going to be there. I think -- well, they've got the
10 information in front of them and they -- they really know what
11 their schedules are, so --

12 HEARING OFFICER DOLLERIS: And who generate -- who made
13 that schedule through 2019?

14 THE WITNESS: It was initially put -- I guess Mike Debolt
15 (phonetic) did it, the original supervisor of operations and
16 maintenance. You know, we -- we gave the format from
17 Cannelton, and you've got, like I say, four crews, basically
18 four two-man crews, and, you know, you basically color code
19 those, and then it all matches up to the -- to the chart that
20 we have there. You can't -- you can't see my hand, can you?

21 HEARING OFFICER DOLLERIS: And I think there was testimony
22 that when the people from Cannelton have come over, they
23 weren't filling in for a shift; they were doing kind of a
24 specific training --

25 THE WITNESS: That's correct.

1 HEARING OFFICER DOLLERIS: -- or a specific thing that was
2 coming up?

3 THE WITNESS: That's correct.

4 HEARING OFFICER DOLLERIS: Is that all they did when they
5 were there?

6 THE WITNESS: Yep. That's --

7 HEARING OFFICER DOLLERIS: Or --

8 THE WITNESS: Yeah.

9 HEARING OFFICER DOLLERIS: Okay. They didn't do other
10 operator duties like check the generator --

11 THE WITNESS: No.

12 HEARING OFFICER DOLLERIS: -- readings?

13 THE WITNESS: No, they didn't. But I guess it -- if
14 somebody asked them something, I'm -- they would be forthcoming
15 with anything. But I'm not a -- that specifically is what they
16 came down for, and anything else was extra innings, you know.

17 HEARING OFFICER DOLLERIS: And you said that the operators
18 wanted to -- at both plants are paid similar wages, not I and
19 II are paid similar to one another. But a I at Smithland and a
20 I at Cannelton, and a II at Smithland and a II at Cannelton are
21 paid similar wages?

22 THE WITNESS: Uh-huh.

23 HEARING OFFICER DOLLERIS: Similar benefits as well?

24 THE WITNESS: Yeah. Their -- their benefits are exactly
25 the same, but I -- the -- as far as their wages are similar,

1 means there may be some variance --

2 HEARING OFFICER DOLLERIS: Uh-huh.

3 THE WITNESS: -- but it's in the general category -- or
4 general areas.

5 HEARING OFFICER DOLLERIS: Sure. And then do the same
6 work rules apply to the employees whether they're at Smithland
7 or Cannelton or a Cannelton employee working at Smithland?

8 THE WITNESS: Yeah, as far as -- yeah, the -- the same
9 procedures and protocols and so forth that -- our policies that
10 AMP has generated are pretty much the same for both of them.

11 HEARING OFFICER DOLLERIS: Okay. Thank you. Now that's
12 all I have.

13 MR. STEPANIAK: That's all. I have nothing else.

14 HEARING OFFICER DOLLERIS: Anything, Mr. McDermitt, based
15 on what I said or anything else?

16 MR. MCDERMITT: No.

17 HEARING OFFICER DOLLERIS: Thank you so much,
18 Mr. Woodward.

19 THE WITNESS: You're welcome.

20 HEARING OFFICER DOLLERIS: Okay.

21 MR. STEPANIAK: Nothing further.

22 HEARING OFFICER DOLLERIS: Nothing further. Okay.
23 Mr. McDermitt?

24 Could we go off the record for a second?

25 (Off the record at 1:51 p.m.)



1 HEARING OFFICER DOLLERIS: Mr. McDermitt, would you like
2 to call a witness?

3 MR. MCDERMITT: Yes. I'm going to let Mr. Donathan take
4 care of it.

5 HEARING OFFICER DOLLERIS: Okay.

6 MR. DONATHAN: I'd like to call --

7 HEARING OFFICER DOLLERIS: Please raise your right hand.
8 Whereupon,

9 **MATTHEW CARLSEN**

10 having been duly sworn, was called as a witness herein and was
11 examined and testified as follows:

12 HEARING OFFICER DOLLERIS: Please be seated. If you could
13 state and spell your name for the record, please.

14 THE WITNESS: My name's Matt Carlsen. M-A-T-T,
15 C-A-R-L-S-E-N.

16 HEARING OFFICER DOLLERIS: Okay. Mr. Donathan.

17 **DIRECT EXAMINATION**

18 Q BY MR. DONATHAN: Matt, how long have you been employed at
19 the Smithland Hydroelectric facility owned by --

20 A Just over a year-and-a-half. I was hired in July of 2016.

21 Q What's your current job tile at the hydroelectric
22 facility?

23 A I'm an Operator II.

24 Q Can you give a brief explanation of your job duties under
25 this job title?



1 A So my primary responsibility is the safe operation of our
2 generating units, starting and stopping the units,
3 communicating with the Army Corps of Engineers and the AMP
4 dispatch. Other duties include preventative maintenance on the
5 equipment, observation of equipment, electric work,
6 instrumentation work, operating the log grabber, some equipment
7 we have to clean our trash rakes, checking in the rec area,
8 keeping it clean. You name it. We're -- we pretty much do it.
9 But the primary responsibility is the safe operation of the
10 hydroelectric power units for the plant.

11 Q Okay. Since your employment with American Municipal
12 Power, have you held any other jobs, job titles in that
13 facility?

14 A No.

15 Q What shift do you currently work?

16 A I'm on A shift.

17 Q A shift?

18 A A shift. That's correct.

19 Q Can you explain that for me?

20 A We work a -- four rotating shift, four shifts, 12-hour
21 shifts and it's a swing shift. It's on a month rotation. It's
22 commonly known as a DuPont swing shift. Two operators on each
23 shift.

24 Q As no Operator I or Operator II employee, who is your
25 direct supervisor?

1 A That'd be Ron Woodward.

2 Q And what is the job title of your direct supervisor?

3 A He is the director of hydroelectric operations, I believe,
4 for Smithland and Cannelton. He's filling in for the vacancy
5 that we have now for -- our current supervisor retired in June
6 of last year. So of course Joe's been filling for him.
7 They've been kind of -- depends what it is, but sometimes we
8 report -- if Joe's there, we may bring up the issue with him.
9 But mainly it's all Ron.

10 Q How many days a week is your supervisor at the facility to
11 the best of your knowledge?

12 A Pretty much every day.

13 Q Is that seven days a week?

14 A Yeah. He goes home some weekends, some weekends he stays.
15 Lately he's been staying.

16 Q Do you know what his normal working hours are?

17 A He's usually there soon after I get there and he'll stay
18 till -- sometimes after I leave, so at least 12 hours,
19 sometimes 13, I'm assuming.

20 HEARING OFFICER DOLLERIS: I'm sorry. Are you talking
21 about Mr. Woodward?

22 THE WITNESS: Yes.

23 HEARING OFFICER DOLLERIS: Thank you.

24 Q BY MR. DONATHAN: In your employment with AMP at the
25 Smithland hydro facility, have you ever been temporarily



1 assigned to another hydroelectric unit?

2 A No. Just for training, they sent us to Cannelton.

3 Q Going back on your direct supervisor. Is this the only
4 person who directs your work at the facility?

5 A No. Sometimes Joe will come out and have us perform
6 duties he needs done or is told to have done. I don't know
7 what goes on there, but he's sent out emails before and
8 directed us to do certain things.

9 Q Could you specify who Joe is?

10 A Joe Frakes. I'm sorry.

11 Q Have you ever been temporarily assigned to any other
12 facility owned or operated by American Municipal Power, not
13 necessarily a hydroelectric facility but anyplace?

14 A No.

15 Q Do other employees from AMP owned or operated facilities
16 ever come to assist employees at the Smithland facility?

17 A Yes, for training purposes.

18 Q Okay. Do they -- do you ever see them do operator work
19 or --

20 A No, sir.

21 Q I want to talk to you a little bit on the logbook. Do you
22 take readings as an Operator II?

23 A Yes, we do.

24 Q Do you put those in the logbook?

25 A Yes, some readings. When we first get there, we sign in.



1 We run down our megawatts on our units, how much we're running,
2 our flow rates and stuff like that. It's one of the first
3 things we do. We get there, talk -- correspond with the Army
4 Corps of Engineers, try to find out what the flow rate of the
5 river's going to be, what our projected output's going to be
6 for the rest of the day. We log all that down into our
7 logbook. Make relief with the off-going shift, and they go
8 over any pertinent information that's -- that went on, on the
9 shift before or anything that may have happened safety-wise or
10 what have you.

11 Q So as an Operator II, you adjust the units, too?

12 A Yes, sir.

13 Q Does that go in the log book?

14 A Yes. Any adjustments made on a unit, you have to call the
15 Army Corps of Engineers, let them know you're changing flow on
16 a unit, if you make any changes on your load, which obviously
17 if you change your flow, you're load's going to change also on
18 the unit. You have to call AMP dispatch and so they can check
19 with MISO, make sure they approve the load change. And that
20 all is required to be logged into our logbook.

21 Q Okay. What about preventative maintenance? The PMs that
22 you do. Is that in a logbook?

23 A It wouldn't be in a log book, unless it's -- unless
24 somebody feels like it's a major one, but it would be in the
25 computer system. So after we do a PM, we go into our computer

1 system, Maximo and we would check off that the tax has been
2 done.

3 Q What about when you operate equipment to pick up trash?
4 Is that logged in the --

5 A That's not logged. No, sir.

6 Q Not logged. What about like setups or stuff like that?
7 Do you have to do setups or anything on those or --

8 A Just like lockout and tagout?

9 Q Printouts, yeah --

10 A Lockout-tagout is generally logged in the logbook. And
11 that would be in the computer also. It's called Redtag Pro.
12 And so that's -- you can -- we have a system that we can access
13 any lockout-tagout that's been set up and view those.

14 Q How many times have you seen Mr. Joe Frakes' name in the
15 operator logbook?

16 A None that I can recall.

17 Q Could you explain to me the process for a purchase request
18 for an operator?

19 A Sure. So let's say I decide I need something purchased, a
20 piece of equipment or supplies or something. What I would do
21 is I would fill out a work order in Maximo. And after the work
22 order is filled out, I would set up a purchase request. That
23 purchase request then goes to a supervisor or somebody that has
24 more authority than an operator. And they approve it and then
25 they order it. And what happens after that, I don't know. I

1 just know that the operator is required to fill out the
2 purchase request and then it goes to management for approval
3 and purchase.

4 Q Who -- so you don't know who approves those requests?

5 A Usually it's Joe, because he comes out and lets me know if
6 I didn't fill something out correctly on it, as we -- he might
7 say hey, you forgot to put in this dollar amount or something,
8 if I -- you know, and he'll have me change it. So I'm assuming
9 that he's the one approving them or at least looking at them.

10 Q Was the Smithland facility operating when you went to
11 Cannelton for training?

12 A Yes, it was. No, I'm sorry. The Smithland facility was
13 not operational, no. The Cannelton was.

14 MR. DONATHAN: That's all I have.

15 HEARING OFFICER DOLLERIS: Mr. Stepaniak?

16 MR. STEPANIAK: Yeah. Just a few.

17 **CROSS-EXAMINATION**

18 Q BY MR. STEPANIAK: How you doing?

19 A Good.

20 Q You, as an operator -- I apologize. Did you say you began
21 as an Op II or became an OP II?

22 A I began as Op II.

23 Q You began as an OP II?

24 A Yes, sir.

25 Q As an Operator II, have you ever assisted in the training



1 of any of the other employees who were regularly employed there
2 at Smithland?

3 A Yes, I have.

4 Q Okay. What kind of things have you done to instruct them?

5 A I showed -- well, several things, actually. Beau, which
6 is another operator. He's a new operator, so I've pretty much
7 been working with him on shift, training him on the operation
8 of the plant. Basically everything, everything he needs to
9 know as far as operation goes, logging in the logbook, all the
10 duties an operator would have.

11 Q All right. Is Beau the fellow that was hired earlier this
12 year?

13 A No, that was actually Brandon. Beau's been here for a
14 little while --

15 Q Okay.

16 A -- but he was -- it took him a little while to get his
17 training started, because there was a lot of other tasks that
18 were being done at the time --

19 Q All right.

20 A -- so --

21 Q Other than Beau, anybody else you've given any training to
22 on a particular --

23 A Yes. I trained -- I've trained Brandon, which he's our --
24 one of other electricians on the PLC that you guys were talking
25 about.

1 Q Right.

2 A I went to the PLC training course and so I showed him the
3 computer program, how to operate the PLC, start it, stop it,
4 controller for the trash rake.

5 Q Okay.

6 A And just other things I've picked up. And we all kind of
7 train each other --

8 Q Okay.

9 A -- to do stuff.

10 Q I think Mr. Donathan may have asked you this, but I just
11 want to make sure. Other than Operator II, you've never held
12 any other title at AMP?

13 A No, sir.

14 Q So you've never been a supervisor?

15 A No, sir.

16 Q Not a manager?

17 A No, sir.

18 Q So the training that you've given to Beau and the training
19 you've done on PLC with the other operator, that sort of
20 stuff -- and I think you told us you both train each other.
21 Training of other operators is something that operators do.

22 A Yes.

23 Q So that's part of their regular training?

24 A I wouldn't say regular, but if you are a new employee and
25 you're not familiar with a piece of equipment or something and



1 that, then yes.

2 Q But you told us that Beau's been working with you on the
3 same shift and you've been training him on the entire operation
4 and --

5 A That's correct. He's about -- he's good now. He's been
6 trained.

7 Q Okay.

8 A I did train him.

9 Q Okay. Do you know --

10 A I know he's been working by himself. I've been off for a
11 little while.

12 Q Okay. And do you know if Mr. Frakes has also participated
13 in the training of other operators at Smithland?

14 A Yes, sir.

15 Q Okay. And I think you heard -- you were in the room when
16 there was testimony about other guys who've come from Cannelton
17 up to Smithland for training purposes?

18 A Yes, sir.

19 Q And as far as you know, these individuals that were
20 testified to by Mr. Woodward, they're all -- they were all
21 operators or Operator IIs at Cannelton?

22 A Yes, sir.

23 Q It wasn't your impression or you don't have any
24 information to suggest that they were management or supervisors
25 or anything --

1 A No, sir. Other than -- I will say this. Mr. Frakes, when
2 he first came down in the beginning, before Mr. Debolt retired,
3 we were told by Mr. Debolt that he was coming down to fill
4 his -- I don't want to quote it wrong -- basically take his
5 place, until a new supervisor -- and help Ron, until a new
6 supervisor was brought in, so that there would be a smooth
7 transition, as Ron stated.

8 Q All right.

9 A So that -- so he -- it was communicated to us that he
10 would be kind of filling a supervisory role. And matter of
11 fact, we got an email that said we should treat him with the
12 same respect -- same respect and dignity as an O&M (phonetic)
13 supervisor.

14 Q Okay. Did Mr. Woodward ever tell you that Mr. Flakes was
15 your supervisor?

16 A Not -- no. He never said that he was our supervisor, no.
17 But he did say that if we have issues or problems, we could let
18 him know. And often times, if we brought something up and
19 Mr. Woodward didn't know -- I shouldn't say how to handle it.
20 That's not the right word. Didn't know how to fix the
21 problem --

22 Q Sure.

23 A -- he would refer us to Joe.

24 Q Sure. And that's because from an operational expertise
25 standpoint, Mr. Frakes probably has more knowledge that

1 Mr. Woodward.

2 A I'd say that's correct.

3 Q Okay. And have other operators come to you and asked you
4 questions, when they have an issue or something about an
5 operational issue?

6 A Sure. I mean, if somebody has a problem or something and
7 you know, we'll see if anybody knows how to fix it.

8 Q That's what we do, yeah. The -- have you ever received
9 formal discipline from Mr. Frakes?

10 A No, sir.

11 Q Do you know anybody who has?

12 A No, sir.

13 Q Do you know if anybody's ever been fired by Mr. Frakes?

14 A No, sir.

15 Q Anybody who's been hired by Mr. Frakes?

16 A No, sir.

17 Q Anybody who's received a performance evaluation from
18 Mr. Frakes?

19 A No, sir. Not that I know of.

20 Q And it wasn't your job to follow Mr. Frakes around all
21 day, was it?

22 A No.

23 Q All right. And there'd be times where you'd be at work
24 and Frakes wouldn't be there, and times when Frakes would be at
25 work and you wouldn't be there. Is that correct?

1 A That is correct.

2 Q So other than the observations you've testified to, you
3 don't know for sure everything that Mr. Frakes has done when
4 he's been at the Smithland facility?

5 A No, I haven't been by his side the whole time.

6 Q All right. And I take it you didn't read every page of
7 the logbook. And you answered the question that Mr. Donathan
8 posed to you as you don't recall seeing his name in the
9 logbook?

10 A Well, common practice is as an operator, when you come in,
11 you review all other shifts prior to you, until you are last --
12 you last worked. Now, I don't know if that's a procedure that
13 AMP has, but that's something that I've done --

14 Q Uh-huh.

15 A -- my whole life. I worked at another chemical plant
16 before this place. And that's what we do. Common practice and
17 procedure is to review all logbooks from the last time you were
18 at work.

19 Q So I guess I'm trying to figure out the, sort of breadth
20 of your testimony. So your testimony that Mr. Frakes has never
21 entered anything into the logbook, or you just don't recall
22 every seeing it?

23 A I don't recall ever seeing it in the logbook.

24 Q Okay. All right. That's all I have.

25 HEARING OFFICER DOLLERIS: I have nothing. Do you have



1 any follow up, Mr. McDermitt? Or Mr. Donathan. I'm sorry.

2 MR. DONATHAN: No problem.

3 **REDIRECT EXAMINATION**

4 Q BY MR. DONATHAN: Yeah, I do have a couple questions for
5 you. Have you ever received maybe, any training or assistance
6 from Mr. Woodward?

7 A As far as operational goes, not as far as the units go,
8 no. But I mean, generally, I guess, you know, just general
9 stuff. I mean, I'm not sure the type of training --

10 Q You know, like if you just had to ask somebody a question.
11 Do you always call someone from Cannelton? Or if
12 Mr. Woodward's there and he can assist you, can he answer that
13 question for you?

14 A Generally not.

15 Q Generally.

16 A Generally -- and of course, depends what it is. But most
17 of the time, he refers us to someone else. He can -- like I
18 said, he can answer some questions when it comes to some of the
19 paperwork and stuff like that, or if it's questions about the
20 Corps, you know, how we need to approach things or whatever.
21 But as far as operational goes, no, he usually refers us.

22 MR. DONATHAN: I have no further questions.

23 MR. STEPANIAK: Yeah. Just a couple to follow that.

24 **RECROSS-EXAMINATION**

25 Q BY MR. STEPANIAK: He can answer -- Mr. Woodward can



1 answer questions about AMP policies and those kinds of things?
2 You said that often, as it relates to operations, he'll send
3 you to someone else. Would that be someone in Cannelton, for
4 example?

5 A Or another operator that has been trained on that. Most
6 of the time, you know, at -- in the beginning, we were new and
7 so we had to refer to Cannelton. Sometimes we would call them
8 on the phone.

9 Q Sure.

10 A When I say refer, I mean call them.

11 Q Yeah.

12 A Most of the time they can answer the questions over the
13 phone, but as we go on, the more experience we get we can most
14 of the time handle it in-house.

15 Q And sometimes you'll ask if you have a question or one of
16 the other guys has a question, he'll ask one of the other
17 Smithland operators if they know how to do a particular thing,
18 because they've encountered it before?

19 A Sure.

20 Q Sometimes they've asked Frakes?

21 A Sure.

22 Q You said that somebody sent you an email about Mr. Frakes
23 and his responsibility. Do you remember who that was?

24 A That was Mr. Mike Debolt.

25 Q Mike?



1 A He was our previous supervisor.

2 Q Okay. All right.

3 MR. STEPANIAK: I have nothing further. Thanks.

4 HEARING OFFICER DOLLERIS: Mr. Donathan? Thank you very
5 much.

6 THE WITNESS: Thanks.

7 MR. MCDERMITT: That's all we have.

8 HEARING OFFICER DOLLERIS: Okay.

9 MR. STEPANIAK: No --

10 HEARING OFFICER DOLLERIS: Okay. All right. Thank you
11 all. In light of the testimony received, would either party
12 like to make any changes in their respective positions on the
13 issues?

14 MR. STEPANIAK: No.

15 HEARING OFFICER DOLLERIS: Okay. Mr. --

16 MR. MCDERMITT: No.

17 HEARING OFFICER DOLLERIS: Okay. Another outstanding
18 issue we have is the subpoena. Union, it seems like the
19 parties agree on all the pertinent facts. I may be wrong about
20 that, but it seems like we're all in agreement. Is there
21 anything left that you still need from the subpoena?

22 MR. MCDERMITT: No. No, there's not.

23 HEARING OFFICER DOLLERIS: Okay. So that'll resolve the
24 petition to revoke as moot.

25 MR. STEPANIAK: Moot.

1 MR. DONATHAN: Moot.

2 HEARING OFFICER DOLLERIS: Moot. Yes. Thank you.

3 Can each party tell me their position on type and date and
4 time, location of the election and eligibility period, please?
5 In case a direction of election is issued?

6 MR. STEPANIAK: Yes, ma'am. The off the record discussion
7 that we had, we reviewed those issues and we agree. So I think
8 our position is the same, and if I misstated, I'm sure
9 Mr. McDermitt will let me know. But referring to the position
10 statement of the Employer if the parties -- Employer. Excuse
11 me. Indicated that the payroll end date --

12 HEARING OFFICER DOLLERIS: Okay.

13 (Counsel confer)

14 HEARING OFFICER DOLLERIS: It's 8F.

15 MR. DONATHAN: Right.

16 MR. STEPANIAK: 8F, yes. January 28, 2018. I think we
17 agreed that was acceptable results and the eight people being
18 listed as -- on Exhibit B as being the eligible voters based on
19 that payroll ending date. Next page.

20 MR. MCDERMITT: Correct.

21 MR. STEPANIAK: Yeah. And we agreed that an election and
22 an appropriate unit could be held on February 23, 2018, that a
23 voting block of one hour from 6:30 a.m. to 7:30 a.m. and then a
24 second voting block 6:30 p.m. to 7:30 p.m. would be
25 appropriate. That an appropriate location would be the

1 conference room at the Smithland facility. That no foreign
2 language ballot would need to be supplied to have a fair
3 election.

4 HEARING OFFICER DOLLERIS: Okay. And I see that the
5 employees are paid biweekly, so if --

6 MR. STEPANIAK: Right.

7 HEARING OFFICER DOLLERIS: -- the next day would be the
8 11th, if we went out that far. Okay. And as far as if --
9 assuming an election is directed, if it does not come out
10 before the 23rd or with enough time for notice postings and
11 such like that, are there other dates proposed that you all
12 have talked about, or days of the week that are better than
13 others? Anything like that.

14 MR. STEPANIAK: We did not discuss that. I don't know if
15 you have a sense of that. In other words, if the date gets
16 rolled sometime in the future, past the February 23rd or some
17 other date that would be next appropriate.

18 MR. WOODWARD: Again, a Thursday date seems to be more
19 efficient from the standpoint of the majority of the people
20 being there those two times.

21 MR. STEPANIAK: I think this date is a Friday, if I'm not
22 mistaken.

23 MR. MCDERMITT: That is correct. That is a Friday.

24 HEARING OFFICER DOLLERIS: Yeah, I thought I'd heard
25 Tuesdays and Fridays were good, but I could be wrong with that.

1 MR. STEPANIAK: That's what I was told. Tuesdays and
2 Fridays was the shift change.

3 MR. WOODWARD: Yeah, there's a shift change and that's --
4 again, I think there are still two people that may not be
5 available those two times, but I could be wrong. I'll have to
6 check and see. I mean, they -- the shift changes, you can
7 catch them early and late and catch six people, but I think
8 there's two of them that may not -- that will have to come in,
9 if I'm not mistaken that -- view that schedule --

10 MR. STEPANIAK: I think our whole view is if the
11 government shutdown or some other exigency pushes us into the
12 future, that the following Friday will be okay.

13 HEARING OFFICER DOLLERIS: Okay. Okay. So I guess -- let
14 me just confirm. Everybody's good with the 6:30 a.m. to 7:30
15 a.m., 6:30 a.m. -- 6:30 p.m. to 7:30 p.m.?

16 MR. MCDERMITT: That is correct.

17 HEARING OFFICER DOLLERIS: Okay. And everybody's fine
18 with the conference room at the 1297 Smithland Dam Road.

19 MR. MCDERMITT: That's correct.

20 MR. STEPANIAK: Correct.

21 HEARING OFFICER DOLLERIS: Okay. And there's no --
22 nothing coming up that the Employer knows of currently, that
23 would prevent an election from happening on a specific date.
24 Okay. And then I'm hearing, I think, that Fridays are best.
25 Maybe Tuesdays or Fridays. But if we can't do it on the 23rd,

1 I guess we'll try to push for a Friday.

2 MR. STEPANIAK: Okay.

3 HEARING OFFICER DOLLERIS: Okay. And then --

4 MR. MCDERMITT: Is there a particular reason if -- I mean,
5 and I realize some parts of it will be dictated by whatever the
6 occurrence is that creates the delay, I mean, but my
7 understanding's correct, Tuesdays and Fridays, for some reason
8 we wouldn't roll over to the 27th or --

9 MR. STEPANIAK: I'm not saying that's impossible. I just
10 don't think sitting here right now, we know, because we didn't
11 really --

12 MR. MCDERMITT: Okay.

13 MR. STEPANIAK: -- consider that issue, so I didn't look
14 at schedules.

15 HEARING OFFICER DOLLERIS: Okay.

16 MR. STEPANIAK: I don't know. I'm not even suggesting
17 that somebody's on vacation that week or anything.

18 HEARING OFFICER DOLLERIS: Okay.

19 MR. STEPANIAK: I just -- it's a total unknowable to us.
20 We did look at the 23rd, said yeah, that'll -- that won't
21 inconvenience anybody unnecessarily, and didn't anticipate that
22 as being --

23 MR. MCDERMITT: And I think --

24 MR. STEPANIAK: And so I was taking sort of a flyer on the
25 Friday, only be that is a pretty good day.

1 MR. MCDERMITT: Yeah.

2 MR. STEPANIAK: So I figured if one Friday works, two
3 should also work.

4 MR. MCDERMITT: Yeah. And just to make sure I understand
5 correct. I mean, basically, the difference would be, between
6 Tuesday and Friday would be the two actual individuals that
7 would have to come in on their own time?

8 MR. STEPANIAK: Probably. It would be different people
9 and so that's the reason I'm not saying Tuesday works for us.
10 I'm just simply --

11 MR. MCDERMITT: Okay. Thank you.

12 HEARING OFFICER DOLLERIS: And Mr. McDermitt, the Union
13 agrees no foreign language ballots. And that's all I guess.

14 MR. MCDERMITT: That is correct, yes.

15 HEARING OFFICER DOLLERIS: Great. Okay.

16 Mr. Stepaniak, do you know -- if could you tell me the
17 name and all the contact information, including fax number of
18 an Employer's onsite representative?

19 MR. STEPANIAK: That's where you shine.

20 HEARING OFFICER DOLLERIS: That's you?

21 MR. WOODWARD: It's me. Ron Woodward.

22 HEARING OFFICER DOLLERIS: Okay. I think I have a lot of
23 your information on the petition. I'll just verify that it's
24 correct.

25 MR. WOODWARD: That's a good point. I think --



1 MR. STEPANIAK: And a lot of emails from you, so --

2 HEARING OFFICER DOLLERIS: R. Woodward?

3 MR. WOODWARD: That's correct.

4 MR. STEPANIAK: It doesn't give a fax number. Do you have
5 a fax number?

6 MR. WOODWARD: No, I don't have a fax. Supposedly we have
7 one, but I don't think it's ever been used, so --

8 HEARING OFFICER DOLLERIS: I think we have an email
9 address, so that's fine. 270-928-3020 is a good phone number?

10 MR. WOODWARD: Yes.

11 MR. STEPANIAK: This phone number is good for you?

12 HEARING OFFICER DOLLERIS: Okay.

13 MR. WOODWARD: Yes, it's good.

14 HEARING OFFICER DOLLERIS: Okay. Great. Thank you.

15 MR. WOODWARD: There's somebody there 24/7.

16 HEARING OFFICER DOLLERIS: Great. Mr. McDermitt, do you
17 wish to proceed to an election in any alternate unit, if the
18 unit sought is found to be inappropriate?

19 MR. MCDERMITT: If the unit itself is determined to be
20 inappropriate?

21 HEARING OFFICER DOLLERIS: Uh-huh.

22 MR. MCDERMITT: No.

23 HEARING OFFICER DOLLERIS: No. Okay. That could result
24 in a dismissal of the petition, just --

25 MR. MCDERMITT: Could you -- could we go off the record



1 and --

2 HEARING OFFICER DOLLERIS: Sure.

3 MR. MCDERMITT: -- give me one second to make sure?

4 (Off the record at 2:40 p.m.)

5 HEARING OFFICER DOLLERIS: Okay. We're back on the
6 record. And I'm sorry. Off the record discussion, so let me
7 ask again. Do you wish -- Mr. McDermitt, in any election, to
8 have an election in any alternate unit, if the unit sought is
9 found inappropriate?

10 MR. MCDERMITT: Yes, we are.

11 HEARING OFFICER DOLLERIS: Thank you. Would the parties
12 like to make any oral arguments at this time?

13 MR. STEPANIAK: Sure.

14 HEARING OFFICER DOLLERIS: Okay. For Employer.

15 MR. STEPANIAK: Briefly, because I think it's all been
16 said before. But the Employer's position is that, because we
17 have from time to time in our brief history at Smithland,
18 employees holding the Operator I or Operator II classification
19 from Cannelton report to Smithland and perform work, which we
20 believe could be encompassed by the sought after unit,
21 including for example, training, as we heard from the Union's
22 witness, that the Regional Director should make the unit
23 description clear.

24 The issue in this case is not sort of the traditional
25 issue you see where people are arguing back and forth for the



1 inclusion or exclusion of certain people. It's rather to
2 ensure for the sake of clarity going forward, that everybody
3 knows who's included and who's excluded. The fact that there's
4 nobody there today is sort of a mere coincidence.

5 There could be somebody there tomorrow, during the week,
6 or in two weeks, if there's an issue that arises at the
7 Smithland facility and AMP decides that it needs to send an
8 operator from Cannelton with greater experience or knowledge
9 there for a temporary assignment. If we permanently assign
10 someone from Cannelton to Smithland, my view would be they'd be
11 in the bargaining unit, if the bargaining unit is certified.

12 So it's just these people who pop in for a day or a week,
13 or in Mr. Frakes' case, even a few weeks, that should be
14 specifically excluded by the Regional Director. The -- I would
15 point the Regional Director to two cases, which by analogy, I
16 think support our position.

17 One is Indiana Bottled Gas 128 NLRB 1441, which held that
18 an August direction of election appropriately excluded from the
19 bargaining unit temporary and casual employees, even though
20 there were none employed at that time, because there had been
21 temporary and casual employees employed there in the past.

22 Another case is FW Woolworth 119 NLRB 480, where the
23 Regional Director properly excluded intermittent employees.
24 And it's all for the sake of unit clarity. We don't think it
25 prejudices anybody's bargaining rights in the future. It's

1 just making sure that the parties know who's in and who's out.
2 A fundamental issue in one of these cases and one in which I
3 think both parties actually agree.

4 HEARING OFFICER DOLLERIS: Thank you.

5 MR. STEPANIAK: Thank you.

6 HEARING OFFICER DOLLERIS: Mr. McDermitt?

7 MR. MCDERMITT: It's the position of the Union that the
8 one issue at hand, as counsel has indicated, is all of the
9 issues, excluding this one, we are pretty much in agreement on.
10 However, it's our position that we have used standard language
11 in the proposed petitioned for unit and that the unit itself is
12 appropriate, by virtue of us agreeing upon the number within
13 the unit is indicative of that fact that we are in agreement as
14 to what the unit is.

15 However, the Union cannot concede voluntarily that the
16 Employer's proposed changes would not affect the mandatory
17 status of the voluntary acknowledgement, as opposed to a
18 directed language from a regional director.

19 HEARING OFFICER DOLLERIS: Okay. Thank you.

20 Mr. McDermitt, would you be -- would the Union be willing
21 to waive all or part of the ten days for the voter list?

22 MR. MCDERMITT: Yes. Yes.

23 HEARING OFFICER DOLLERIS: Thank you. That will help us
24 schedule the election. Okay. Is there any -- are there any
25 further witnesses or evidence any party wishes to present?

1 MR. STEPANIAK: Not at this time. No, thank you.

2 HEARING OFFICER DOLLERIS: For the Union?

3 MR. MCDERMITT: No.

4 HEARING OFFICER DOLLERIS: Okay. The Regional Director
5 will issue a decision in this matter as soon as practical and
6 will immediately transmit the document to the parties and their
7 designated representatives by email, facsimile or by overnight
8 mail, if neither an email address or facsimile number is
9 provided.

10 If an election is directed, the Employer must provide the
11 voter list. To be timely filed and served, the voter list must
12 be receive by the Regional Director and the parties named in
13 the direction within two business days after the issuance of
14 the direction, unless a longer period, based on extraordinary
15 circumstances is specified in the decision and direction of
16 election.

17 A certificate of service on all parties must be filed with
18 the Regional Director when the voter list is filed. The Region
19 will no longer serve the voter list. The Employer must submit
20 the voter list in an electronic format approved by the General
21 Counsel, unless the Employer certifies that it does not have
22 the capacity to produce the list in the required format. The
23 list must be filed in common everyday electronic file formats
24 that can be searched.

25 Accordingly, unless otherwise agreed to by the parties,



1 the list must be provided in a table in a Microsoft Word file,
2 .doc or .docx or a file that is compatible with Microsoft Word
3 .doc or docx. The first column of the list must begin with
4 each employee's last name and the list must be alphabetized
5 overall or by department by last name. Because the list will
6 be used during the election, the font size of the list must be
7 the equivalent of Times New Roman 10 or larger. That font does
8 not need to be used, but the font must be that size or larger.

9 A sample optional form for the list is provided on the
10 NLRB website at www.nlr.gov. The Board stated that it is --
11 excuse me. The Board stated that it is presumptively
12 appropriate for the Employer to produce multiple versions of
13 the list, where the data required is kept in separate databases
14 or files, so long as all of the lists link the information to
15 the same employees using the same names in the same order and
16 are provided within the allotted time. See 70 Federal Register
17 74356.

18 If the Employer provides multiple lists, the list used at
19 the election will be the list containing the employees' names
20 and addresses. The list must include the full names, work
21 locations, shifts, job classification and contact information,
22 including home addresses, available personal email addresses
23 and available home and personal cellular telephone numbers of
24 all eligible voters.

25 The Employer must also include in a separate section of



1 that list, the same information for those individuals the
2 parties have agreed will be permitted to vote subject to
3 challenge, or those individuals who, according to the decision
4 and direction of election, will be permitted to vote subject to
5 challenge.

6 Mr. Baldwin, could you tell us the estimated length of the
7 transcript to these?

8 THE COURT REPORTER: A hundred and twenty pages.

9 HEARING OFFICER DOLLERIS: Thank you. And do you have all
10 of the exhibits, all two exhibits, Mr. Baldwin?

11 THE COURT REPORTER: Yes.

12 HEARING OFFICER DOLLERIS: Thank you. Okay. Anything
13 further from the Union?

14 MR. MCDERMITT: Nothing.

15 HEARING OFFICER DOLLERIS: Anything further from the
16 Employer?

17 MR. STEPANIAK: No, ma'am. Thank you.

18 HEARING OFFICER DOLLERIS: Thank you. Hearing nothing
19 further, the hearing is closed.

20 **(Whereupon, the hearing in the above-entitled matter was closed**
21 **at 2:50 p.m.)**

22

23

24

25



CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 10, Case Number 10-RC-213684, at the National Labor Relations Board, Region 10, Nashville Resident Office Hearing Room, 810 Broadway, Suite 302, Nashville, Tennessee 37203, on Tuesday, February 6, 2018, 11:43 a.m., was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



GARY BALDWIN

Official Reporter

FORM NLRB-505
(4-15)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.
10-RC-213684Date Filed
February 5, 2018**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position: American Municipal Power, Inc.		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code): 1297 Smithland Dam Road, Smithland, KY 42081		1d. Cell No.:	1f. e-Mail Address:
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.) The proposed unit includes employees employed at other facilities who occasionally work at the Smithland facility on temporary assignments. These employees lack a community of interest with the eight employees who should be in the unit.			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added: None Excluded: See 3a above			
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility. None known at this time. AMP agrees that eight employees belong in the bargaining unit. The problem is the union's proposed unit definition exceeds those eight employees.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing. None known at this time. We believe the election arrangements are agreed, but if there were changes to the election arrangements AMP may oppose them.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015 (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D).			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s): February 23, 2018	8c. Time(s): 6:30 - 7:30 (both morning and evening)	8d. Location(s): Conference Room at facility	
8e. Eligibility Period (e.g. special eligibility formula): None	8f. Last Payroll Period Ending Date: January 28, 2018	8g. Length of payroll period <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative Kerry P. Hastings	9b. Signature of authorized representative 		9c. Date 02/05/18
9d. Address (Street and number, city, state, and ZIP code) Taft Stettinius & Hollister LLP 425 Walnut Street, Suite 1800 Cincinnati, OH 45202			9e. e-Mail Address hastings@taftlaw.com
9f. Business Phone No.: (513) 357-9380	9g. Fax No.: (513) 381-0205	9h. Cell No.:	


WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Statement of Position and its attachments was electronically filed with the National Labor Relations Board and served by email on February 5, 2018 upon the following:

International Brotherhood of Electrical Workers AFL-CIO IBEW Local Union No. 816,
Petitioner
c/o Chad Donathan
chad_donathan@ibew.org



Kerry P. Hastings

INITIAL EMPLOYEE LIST (Filed with Statement of Position)Employer Name: American Municipal Power, Inc.Case No. 10-RC-213684**Attachment B: Employees in Petitioned for Unit**

Employee Name	Work Location	Shift	Job Classification
1. Ashby, Ross T.	Smithland	Night	Plant Operator II
2. Beckner, Beau	Smithland	Night	Plant Operator I
3. Carlsen, Matthew	Smithland	Night	Plant Operator II
4. Guy, Robert Paul	Smithland	Day	Plant Operator II
5. Leaidicker, Thomas	Smithland	Night	Plant Operator I
6. Nearing, Scott	Smithland	Night	Plant Operator II
7. Terry, Brandon	Smithland	Day	Plant Operator I
8. Vieitez, Richard J.	Smithland	Day	Plant Operator I
9.			
10.			
11.			
12.			
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34.			

INITIAL EMPLOYEE LIST (Filed with Statement of Position)Employer Name: American Municipal Power, Inc.Case No. 10-RC-213684**Attachment C: Employees to be Added to Petitioned-for Unit**

Employee Name	Work Location	Shift	Job Classification
1. N/A			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

Attachment D: Names of Employees to be Excluded from Petitioned-for Unit

Employee Name
1. Frakes, Joe
2. No other employees can be identified at this time.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE



American Municipal Power, Inc., Employer and International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816, Petitioner	Case 10-RC-213684
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STIPULATION

The parties in this matter stipulate and agree that:

1. We have been informed of the procedures at formal hearings before the National Labor Relations Board by service of the Description of Representation Case Procedures in Certification and Decertification Cases with the Notice of Hearing. The Hearing Officer has offered to us additional copies of the Statement of Procedures.
2. To the extent the formal documents in this proceeding do not correctly reflect the names of the parties, the parties hereby make a joint motion to the Regional Director to amend the petition and other formal documents to correctly reflect the names as follows:

Correct name of the Employer: American Municipal Power, Inc.

Correct name of the Petitioner: International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
4. The Petitioner claims to represent the employees in the unit described in the petition herein, and the Employer declines to recognize the Petitioner.
5. Neither the Employer nor the Petitioner is aware of any other employers or labor organizations that have an interest in this proceeding.
6. There are no other petitions in other Regional offices involving other facilities or locations of the Employer.

B-2

Case No. 10-RC-213684

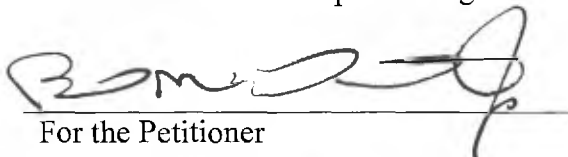
7. There have been no known prior attempts to organize the unit described in the petitioned-for unit.
8. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

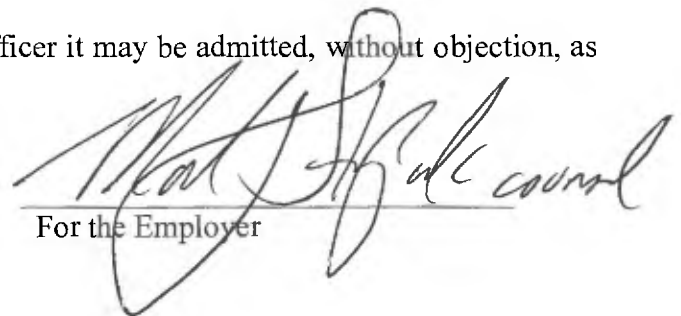
Commerce facts are as follows:

The Employer, American Municipal Power, Inc., an Ohio corporation with its principal offices located at 1111 Schrock Road, Suite 100, Columbus, Ohio and a power generation facility located at 1297 Smithland Dam Road, Smithland, Kentucky, the only facility involved, is engaged in providing the generation, transmission, and distribution of electric power and energy to its members. During the past twelve months, the Employer derived gross revenues in excess of \$250,000, and purchased and received goods or services in excess of \$50,000 which originated outside the State of Kentucky.

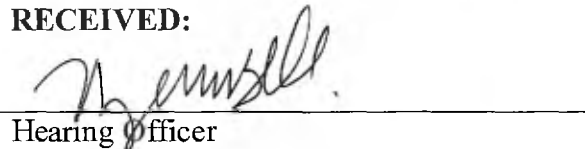
9. There is no collective-bargaining agreement covering any of the petitioned-for employees at the Employer's Smithland, Kentucky, facility, and there is no contract bar or other bar to this proceeding.

Upon receipt of this Stipulation by the Hearing Officer it may be admitted, without objection, as a Board exhibit in this proceeding.


For the Petitioner


For the Employer

RECEIVED:


Hearing Officer

2/6/2018
Date

Board Exhibit No. 2

EXHIBIT NO. B2 RECEIVED / REJECTED
16-RC-213684
CASE NO. CASE NAME American Municipal
2
NO. OF PAGES: 2 DATE: 2/6 REPORTER: COB

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE**

AMERICAN MUNICIPAL POWER, INC.

Case 10-CA-221403

and

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO,
LOCAL UNION NO. 816**

MOTION FOR SUMMARY JUDGMENT

Pursuant to Sections 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board (the Board), in order to effectuate the purposes of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and to avoid unnecessary costs or delay, Counsel for the General Counsel respectfully moves to transfer this case to the Board and moves for Summary Judgment. American Municipal Power, Inc. (Respondent) has refused to bargain with International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816 (the Union) in order to test the Board's recent certification of the Union as the exclusive collective-bargaining representative of Respondent's Operator I and Operator II employees at its Smithland, Kentucky facility. This case presents no genuine issues as to any material fact, and the General Counsel is entitled to judgment as a matter of law. In support of this Motion, Counsel for the General Counsel states the following:

1. On January 26, 2018,¹ the Union filed a petition in American Municipal Power, Inc., Case 10-RC-213684 (Exhibit. 1). The Union amended the petition on January 29 to fix a minor clerical error (Exhibit 2).

2. On February 6, the Region held a representation hearing. The Regional Director for Region 10 issued a Decision and Direction of Election on February 15 (Exhibit 3). The

¹ All dates are in 2018, unless otherwise noted.

Regional Director directed a manual election and found the following unit of Respondent's employees (the Unit) to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

3. On February 23, a representation election was conducted among Respondent's employees in the Unit. There were eight eligible voters. The Tally of Ballots shows eight votes cast for the Union, zero votes cast against the Union, and zero challenged ballots (Exhibit 4)

4. On March 6, the Regional Director for Region 10 certified the Union as the exclusive collective-bargaining representative of the Unit (Exhibit 5).

5. On March 19, Respondent filed with the Board a Request for Review of the Regional Director's Decision and Direction of Election in Case 10-RC-213684 (Exhibit 6). In an unpublished decision, the Board denied Respondent's Request for Review on May 31 (Exhibit 7).

6. At all times since March 6, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of employees in the Unit.

7. On April 10, the Union requested, by letter sent certified mail return receipt requested, that Respondent commence bargaining collectively with the Union (Exhibit 8). The Union sent the letter to Respondent's Director of Hydroelectric Operations Ronald Woodward and stated in part:

The Union is requesting from the company, possible dates to meet, to begin the negotiation process. We feel that a meeting between the company and Union negotiation committees is necessary prior to the actual presentation of proposals to discuss the ground rules for the negotiations, for introductions, and scheduling

of future negotiation sessions.

The Union is proposing the first meeting take place on the following dates, May 8, 9 and/or 10, 2018.

8. Respondent received the Union's April 10 request to bargain on April 18 (Exhibit 9), but it did not respond.

9. On May 14, the Union sent Respondent a second request to bargain (Exhibit 10) by certified mail, return receipt requested. This time, the Union sent its request to bargain to Respondent's Director of Hydroelectric Operations Woodward, Director of Human Resources Elizabeth Lander, Senior Vice President of Generation Operations Scott Kiesewetter, Vice President of Hydroelectric Development and Operations Phil Meier, and Respondent's counsel Kerry P. Hastings. The Union wrote in part:

The Union is again requesting that the company contact us with possible dates to meet for the purpose of beginning the bargaining process.

10. Respondent received the second request to bargain (Exhibit 11), but it did not respond.

11. The Union filed the charge in this proceeding on June 4 (Exhibit 12).

12. On June 14, the Regional Director for Region 10 issued Complaint and Notice of Hearing in this matter alleging that Respondent has been refusing to recognize and bargain collectively with the Union as the exclusive collective bargaining representative of the Unit in violation of Section 8(a)(1) and (5) of the Act (Exhibit 13).

13. On June 28, Respondent filed its Answer to the Complaint (Exhibit 14). Respondent admits in its Answer that the Regional Director certified the Union as the collective-bargaining representative of the Unit. Respondent also admits that the Union sent the April 10 and May 14 letters requesting to bargain and that it has failed and refused to recognize and

bargain with the Union as the exclusive collective-bargaining representative of the Unit.

14. In its Answer, Respondent denies that the Unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and stated that the purported certification of representative was invalid. In its First Affirmative Defense, Respondent argued that the Unit is inappropriate because it “apparently includes employees whom the Union conceded do not share a community of interest with the employees who should be in the unit.” Respondent’s denials and its Affirmative Defense do not raise any material issues requiring a hearing.

15. For the reasons set forth in the attached Memorandum in Support of Motion for Summary Judgment, we submit that Respondent has raised no question of fact requiring a hearing, and, as a matter of law, Respondent has no valid defense to the Complaint

NOW, THEREFORE, the undersigned Counsel for the General Counsel respectfully moves that: (1) the Complaint and this proceeding be transferred to and continued before the Board; (2) the Board find the allegations of the Complaint to be true; (3) the Board issue a Decision and Order based on such findings requiring Respondent, inter alia, to recognize and bargain collectively with the Union as the exclusive collective bargaining representative of the Unit; and (4) the Board grant such other and further relief as may be appropriate.

Dated: July 5, 2018



Meagan B. Dolleris
Counsel for the General Counsel
National Labor Relations Board
Region 10, Nashville Resident Office
810 Broadway, Suite 302
Nashville, TN 37203
629-800-6273

FORM NLRB-502 (RC)
(4-15)UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

10-RC-213684

Date Filed

1-26-2018

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer American Municipal Power		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 1297 Smithland Dam Rd. Smithland, KY 42081	
3a. Employer Representative - Name and Title Ronald Woodward		3b. Address (If same as 2b - state same) Same	
3c. Tel. No. 1-270-928-3020	3d. Cell No. 1-614-403-8147	3e. Fax No.	3f. E-Mail Address rwoodward@ampppartners.org
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Utility		4b. Principal product or service Hydroelectric Power	5a. City and State where unit is located: Smithland, KY
5b. Description of Unit Involved Included: See Attachment Excluded: See Attachment			6a. No. of Employees in Unit: 8 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) 1/17/18 and Employer declined recognition on or about 1/26/18 (Date) (If no reply received, so state). **No Reply**
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state). None		8b. Address N/A	
8c. Tel No. N/A	8d. Cell No. N/A	8e. Fax No. N/A	8f. E-Mail Address N/A
8g. Affiliation, if any N/A		8h. Date of Recognition or Certification N/A	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) N/A

9. Is there now a strike or picketing at the Employer's establishment(s) involved? NO If so, approximately how many employees are participating? NONE
 (Name of labor organization) N/A, has picketed the Employer since (Month, Day, Year) N/A.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)
 None

10a. Name N/A	10b. Address N/A	10c. Tel. No. N/A	10d. Cell No. N/A
		10e. Fax No. N/A	10f. E-Mail Address N/A

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

11b. Election Date(s): 2/20/18	11c. Election Time(s): 6:30am To 7:30am & 6:30pm To 7:30pm	11d. Election Location(s): Employee Break Room located at 1297 Smithland Dam Rd. Smithland, KY 42081
-----------------------------------	---	---

12a. Full Name of Petitioner (including local name and number)
International Brotherhood of Electrical Workers AFL-CIO IBEW Local Union No. 816

12b. Address (street and number, city, state, and ZIP code)
4515 Clarks River Road Paducah, Ky 42003

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)
International Brotherhood of Electrical Workers

12d. Tel No. 1-270-898-2456	12e. Cell No. 270-519-3161	12f. Fax No. 1-270-898-2694	12g. E-Mail Address jevans@ibewlocal816.org
--------------------------------	-------------------------------	--------------------------------	--

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title Chad Donathan		13b. Address (street and number, city, state, and ZIP code) 235 Juniper Ct. Mt. Sterling, Ky 40353	
13c. Tel No.	13d. Cell No. 1-859-404-8905	13e. Fax No.	13f. E-Mail Address chad_donathan@ibew.org

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Chad Donathan	Signature <i>Chad Donathan</i>	Title Lead Organizer	Date 1/26/18
-------------------------------	-----------------------------------	-------------------------	-----------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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EXHIBIT

1

Attachment:

5b Unit Involved

Included – All full-time and regular part-time employees of the Employer performing work at its facility located at 1297 Smithland Dam Rd. Smithland, KY 42081.

Excluded - Office Clerical employees, Professional employees, Guards and Supervisors as defined in the Act, and all other employees.

FORM NLRB-502 (RC)
(4-15)UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

First Amended RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

10-RC-213684

Date Filed

01/29/2018

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

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2a. Name of Employer American Municipal Power		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 1297 Smithland Dam Rd. Smithland, KY 42081	
3a. Employer Representative - Name and Title Ronald Woodward		3b. Address (If same as 2b - state same) Same	
3c. Tel. No. 1-270-928-3020	3d. Cell No. 1-614-403-8147	3e. Fax No.	3f. E-Mail Address rwoodward@amppartners.org
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Utility		4b. Principal product or service Hydroelectric Power	
5a. City and State where unit is located: Smithland, KY			5b. Description of Unit Involved Included: See Attachment Excluded: See Attachment
6a. No. of Employees in Unit: 8		6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Check One: <input checked="" type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) <u>1/22/18</u> and Employer declined recognition on or about _____ (Date) (If no reply received, so state). No Reply			
<input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (If none, so state). None		8b. Address N/A	
8c. Tel. No. N/A	8d. Cell No. N/A	8e. Fax No. N/A	8f. E-Mail Address N/A
8g. Affiliation, if any N/A		8h. Date of Recognition or Certification N/A	
8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) N/A			
9. Is there now a strike or picketing at the Employer's establishment(s) involved? <u>NO</u> If so, approximately how many employees are participating? <u>NONE</u> (Name of labor organization) <u>N/A</u> , has picketed the Employer since (Month, Day, Year) <u>N/A</u> .			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state) None			
10a. Name N/A	10b. Address N/A	10c. Tel. No. N/A	10d. Cell No. N/A
		10e. Fax No. N/A	10f. E-Mail Address N/A
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
11b. Election Date(s): 2/20/18	11c. Election Time(s): 6:30am To 7:30am & 6:30pm To 7:30pm		11d. Election Location(s): Employee Break Room located at 1297 Smithland Dam Rd. Smithland, KY 42081
12a. Full Name of Petitioner (including local name and number) International Brotherhood of Electrical Workers AFL-CIO IBEW Local Union No. 816		12b. Address (street and number, city, state, and ZIP code) 4515 Clarks River Road Paducah, Ky 42003	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) International Brotherhood of Electrical Workers			
12d. Tel. No. 1-270-898-2456	12e. Cell No. 270-519-3161	12f. Fax No. 1-270-898-2694	12g. E-Mail Address jevans@ibewlocal816.org
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title Chad Donathan		13b. Address (street and number, city, state, and ZIP code) 235 Juniper Ct. Mt. Sterling, Ky 40353	
13c. Tel. No.	13d. Cell No. 1-859-404-8905	13e. Fax No.	13f. E-Mail Address chad_donathan@ibew.org
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Chad Donathan	Signature <i>Chad Donathan</i>	Title Lead Organizer	Date 1/26/17

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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EXHIBIT

2

Attachment:

5b Unit Involved

Included – All full-time and regular part-time employees of the Employer performing work at its facility located at 1297 Smithland Dam Rd. Smithland, KY 42081.

Excluded - Office Clerical employees, Professional employees, Guards and Supervisors as defined in the Act, and all other employees.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

AMERICAN MUNICIPAL POWER, INC.

Employer

and

Case 10-RC-213684

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, LOCAL
UNION NO. 816**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816, seeks to represent a unit of operator employees that the Employer¹ employs at its Smithland facility. The sole issue in this proceeding is whether the unit description needs to address the voting eligibility of employees from other Employer facilities that the Employer has in the past temporarily assigned to work in the Smithland facility. In the paragraphs that follow, I explain my basis for concluding that it is unnecessary to address their status in the unit description when there are no employees in that status and the Employer has no current plans to temporarily assign these employees to the Smithland facility in the future.

On January 26, 2018, the Union filed a petition with the Region seeking an election to become certified as the bargaining representative of certain employees of the Employer at its Smithland, Kentucky facility. The petitioned-for unit description is:

Included: All full-time and regular part-time employees of the Employer performing work at its facility located at 1297 Smithland Dam Rd., Smithland, KY 42081

Excluded: Office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

On January 29, 2018, the Union filed an amended petition to correctly note that it had requested voluntary recognition from the Employer on January 22, 2018 and the Employer had not yet responded.

A hearing officer of the National Labor Relations Board conducted the hearing in this matter on February 6, 2018, and gave all parties the opportunity to present evidence on the issues raised by the petition, to examine and cross-examine witnesses, and present arguments and case law in support of their positions.

¹ The Employer is an Ohio corporation that generates, transmits, and distributes electric power and energy to its member-consumers in Kentucky. Its headquarters is located in Columbus, Ohio, and it has a power generation facility located at 1297 Smithland Dam Road, Smithland, Kentucky, the only facility involved.

EXHIBIT

3

American Municipal Power, Inc.
Case 10–RC–213684

Both the Employer and the Petitioner agree that employees who work at other facilities but who work temporarily at the Smithland facility should not be permitted to vote in this election. However, the dispute at the hearing is whether specifically to exclude these employees in the unit description, or whether to leave their status unanswered for now so that the parties may handle their placement through the collective-bargaining process should the issue arise in the future.

After reviewing the evidence, I find the following unit to be an appropriate for collective bargaining, and therefore, I am directing an election in this matter for the following unit:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

To provide a context for my discussion, I will first discuss the position of the parties and then provide my legal analysis to explain why I conclude the petitioned-for unit (as clarified during the hearing) is an appropriate and unambiguous unit and there is no need for additional language specifically excluding employees from other Employer facilities who temporarily work at the Smithland facility.

I. Position of the Parties

The Employer's primary argument is that the unit description should specifically exclude employees normally employed at other Employer facilities but temporarily assigned to the Smithland facility. The Employer made an offer of proof and also had one witness testify at the hearing. The Employer's evidence showed there are eight employees who work at the Smithland facility. The Employer further identified five other employees from other Employer facilities whom it had occasionally, sporadically, or periodically assigned to the Smithland facility.

The Employer argues that only the eight employees primarily assigned to work at the Smithland facility should be included in the unit. The Employer acknowledged at the hearing that it currently has no employees from other facilities temporarily assigned to work at the Smithland facility and it has not scheduled any employees to do so in the future. The Employer noted, however, there had been an employee temporarily working at the Smithland facility two days before the Petitioner filed the petition. The Employer argues these temporarily-assigned employees do not share a community of interest with the eight employees who primarily work at the Smithland facility. The Employer believes the petitioned-for unit is broad enough to cover employees who are temporarily assigned to work at the Smithland facility, and therefore the unit description should clearly state which employees are specifically included (for example, "employees primarily assigned to the Smithland facility"), or somehow specifically exclude employees who are primarily assigned to other facilities.

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The Petitioner agrees that only the eight employees currently employed at the Smithland facility should be eligible to vote, but the Petitioner does not want to alter the unit description as the Employer suggests. The Petitioner contends that it used standard unit-description language to describe the petitioned-for unit and that this unit is appropriate and unambiguous. It argues that both the Employer and Petitioner agree as to the eight employees covered by the description evidences this. The Petitioner contends that, if it were to agree to the Employer's proposed unit description, the unit placement of employees temporarily performing bargaining unit work at the Smithland facility (should the Employer assign employees to do so in the future) would be a permissive subject of bargaining instead of a mandatory subject of bargaining. The Union does not want to acquiesce to an automatic exclusion of these employees from the bargaining unit and would prefer to bargain over their placement with the Employer should the issue arise in the future.

Thus, the only issue is whether the unit description should address the placement of employees from other Employer facilities temporarily assigned to the Smithland facility.

II. Factual Findings

The Employer operates power generation facilities located near dams. The Smithland facility is a relatively newer power generation facility that only began full operation in about May 2017. Employees began working at the Smithland facility prior to the facility becoming fully operational, with at least one employee starting in July 2016. Prior to the facility becoming fully operational and during the first months of full operations, some employees from another Employer facility, the Cannelton facility, spent days working at the Smithland facility. Four employees who worked as operators at the Cannelton facility held temporary assignments to the Smithland facility for just a few days at a time. Operator Woosley spent one day in April 2017 working with the Smithland employees. Operator Haycraft spent two days in April 2017 training and assisting Smithland facility employees. Operator Stewart spent three days in June 2017 and one day in July 2017 training Smithland facility employees. Lastly, Operator Harrell spent four days in March 2017 and some more time in July 2017 working with the Smithland employees.² All four of these employees came from the Cannelton facility and the work they did at the Smithland facility alongside other Smithland employees involved either training the Smithland employees in how to do their normal work, or assisting the Smithland employees with their normal operator work. As indicated by the dates of their work, it has been over six months since a Cannelton employee had a temporary assignment for less than a week of work at the Smithland facility, and the Employer acknowledged there was no current plan or schedule for any temporary assignments in the future.

An additional Cannelton employee held a temporary work assignment at the Smithland facility but the assignment differed from the four mentioned above. Cannelton employee operator Joe Frakes worked at the Smithland facility about five days a week from about June 2017 to October 2017 and then about one day a week from October 2017 until mid-January

² Neither party provided evidence on how many days Mr. Harrell spent working at the Smithland facility during July 2017.

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2018. Frakes spent about 50 percent of his time doing operator work alongside the other Smithland employees and the other 50 percent of his time doing administrative work to assist the Employer while there was an open supervisor position at the Smithland facility. The supervisor at the Smithland facility retired in June 2017 and it has taken longer than anticipated for the Employer to bring in a new supervisor. During this time, Director of Hydroelectric Operations Rod Woodward spent much of his time at the Smithland facility, and Frakes' administrative role was to assist Woodward by reviewing paperwork, approving purchase orders, and organizing electronic files for the sake of facilitating eventual transition to a new regular supervisor. Neither party asserted that Frakes was a supervisor and the evidence indicated Frakes works as an Operator II at the Cannelton facility in a non-supervisory capacity.

The Employer paid for the travel and required lodging for all five of these employees who worked temporarily at the Smithland facility. There is no evidence that the Employer changed the pay or job description of the five employees for their work at Smithland. All five employees engage in the same type of operator work at the Cannelton facility as the petitioned-for Smithland employees do at the Smithland facility, and their rates of pay at each facility are similar.

The evidence establishes that four of the five employees from other facilities who worked temporarily at the Smithland facility did so as part of the Employer's initiation of operations at Smithland. That facility is now fully operational. The fifth employee assisted a manager after the supervisor at the facility retired. None of them worked there based on an ongoing need for temporary help at that facility. Other than these five, no other employees from other Employer facilities have held a temporary work assignment to do operator work at the Smithland facility. The Employer also currently has no scheduled plans for any employees from other facilities to perform temporary work assignments at the Smithland facility. The Employer asserted it could conceive of an instance when it might need temporary work assignments, such as an operations issue requiring the additional expertise of some of the employees at the Cannelton facility, or if there was a severe staffing issue (for example due to sickness) and the Smithland facility needed some additional workers to make sure the facility kept running properly.

Regarding the appropriate unit description for eligible voters at the election, both parties appear to agree on many of the same inclusions and exclusions. During the hearing, the hearing officer offered a suggested stipulation that an appropriate unit would include "all full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky" and exclude "all office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act." The Petitioner agreed that this unit would be appropriate. The Employer had no objection to changing the inclusions to specifically name the job titles of Operator I and Operator II and to exclude confidential employees, but would not agree to the stipulation unless the unit description noted the included employees were those "primarily assigned" to the Smithland facility. The Petitioner did not agree to the Employer's proposed change to the included employees as being those "primarily assigned." The hearing officer noted what the parties did and did not agree to and moved on to the rest of the hearing.

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III. Analysis

The Employer relies on *Indiana Bottled Gas*, 128 NLRB 1441 (1960), where the Board, in a decision and direction of election, specifically excluded temporary and casual employees from the voting unit description despite that the employer in that case did not then employ any temporary or casual employees. In a footnote, the Board explained that the employer had a history of employing part-time temporary employees during the employer's busy season, but these employees did not have any expectation of recall nor was there a practice of recalling these employees on a regular basis. Therefore, the Board specifically excluded "temporary and casual employees" in the unit description. *Id.* at 1443 fn. 3. The Employer also relies on *FW Woolworth*, 119 NLRB 480 (1957), as another example where the Board specifically excluded "intermittent" employees. Like the employer in *Indiana Bottled Gas*, the employer in *FW Woolworth* routinely hired these employees for busy seasons for a finite duration, and then let them go. Unlike the Employer in this case, who has no current plans to temporarily assign employees to Smithland, the employers in *Indiana Bottled Gas* and *FW Woolworth* consistently hired temporary or "intermittent" employees during their busy seasons and thus it made sense in those cases to settle their status notwithstanding that the employer had no such employees at the time of the hearing. There is no such concern compelling me to settle the status of the Employer's employees temporarily assigned to the Smithland facility.

Indiana Bottled Gas also involved temporary employees. The term "temporary employees" typically refers to employees who have a finite end date for their employment separate from permanent employees. See *Marian Medical Center*, 339, NLRB 127, 128 (2003). (The "intermittent" employees in *FW Woolworth* had the same status as the temporary employees in *Indiana Bottled Gas*.) The "temporary employees" in this case are actual permanent employees of the Employer who work at a different location and have only been "temporarily" assigned to the Smithland facility on an ad hoc basis. In the event the Employer changes plans and routinely assigns such employees to the Smithland facility in the future, there may be factors that make including them in the unit a more compelling argument than the truly ephemeral employees in *Indiana Bottle Glass* and *FW Woolworth*. Leaving the temporarily assigned employees out of the exclusions at this time leaves more room for the parties to adjust their unit description by negotiation, if they wish, in the event the Employer begins to assign such employees to Smithland.

Board law also supports omitting the placement of employees temporarily assigned to Smithland in the absence of any finite plans on the Employer's part to resume assigning these employees to that facility. In representation cases, "the Board looks to the actual, existing composition of units and to employees actually working to determine the composition of units." *Coca-Cola Bottling Co. of Wisconsin*, 310 NLRB 844, 844 (1993). For example, the Board has dismissed unit clarification petitions when the petitioned for classification had no actual employees within the classification. *ITT World Communications*, 201 NLRB 1, 2 (1973). Furthermore, the concerns the Petitioner raised in voluntarily agreeing to specifically exclude employees on temporary assignment are valid. The issue of temporary assignments from other facilities is not a unique issue and should the Petitioner become the certified representative of the

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petitioned-for unit, such an issue is one that is better resolved through the collective-bargaining process. *Union Electric*, 216 NLRB 666, 667 (1975).

Therefore, I find the petitioned-for unit (as clarified during the hearing) is an appropriate and unambiguous unit and there is no need for additional language specifically excluding employees who work at other Employer facilities not addressed in this petition.

IV. **Conclusions and Findings**

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's ruling made at hearing are free from prejudicial error and are affirmed.
2. As the parties stipulated,
 - a. the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here;
 - b. the Petitioner claims to represent certain employees of the Employer; and
 - c. the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816.

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A. Election Details

The election will be held on Friday, February 23, 2018 from 6:30 a.m. to 7:30 a.m. and 6:30 p.m. to 7:30 p.m. (all times Central Time) at the Conference room at the Employer's facility located at 1297 Smithland Dam Road, Smithland, Kentucky 42081.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **February 11, 2018** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Monday, February 19, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

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the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least three full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

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A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: February 15, 2018

A handwritten signature in black ink, reading "John D. Doyle Jr." with a stylized flourish at the end.

JOHN D. DOYLE JR.
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 10
233 Peachtree Street NE
Harris Tower Suite 1000
Atlanta, GA 30303-1504

10/01/26/2018

Petitioner

State KY

☒ RD Direction
Incumbent Union (Code)☐ Mail Ballot[illegible]

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

American Municipal Power, Inc.

Employer

and

Case 10-RC-213684

**International Brotherhood of Electrical Workers,
AFL-CIO, Local Union No. 816**

Petitioner

TYPE OF ELECTION: RD DIRECTED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

International Brotherhood of Electrical Workers, AFL-CIO, Local Union
No. 816

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit: All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.



March 6, 2018

A handwritten signature in black ink, reading "John D. Doyle, Jr." with a stylized flourish at the end.

JOHN D. DOYLE, JR.
Regional Director, Region 10
National Labor Relations Board

Attachment: Right to Request Review and Notice of Bargaining Obligation



RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of the regional director's decision to direct an election, if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington **by March 20, 2018**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,¹ an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MUNICIPAL POWER,	:	
INC.,	:	
	:	
Employer,	:	
	:	
and,	:	
	:	Case No. 10-RC-213684
INTERNATIONAL BROTHERHOOD	:	
OF ELECTRICAL WORKERS, AFL-	:	
CIO, LOCAL UNION NO. 816,	:	
	:	
Petitioner.	:	

**EMPLOYER’S REQUEST FOR REVIEW OF
REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

I. INTRODUCTION

Pursuant to Section 102.67 of the National Labor Relations Board’s (“Board”) Rules and Regulations, American Municipal Power, Inc. (“AMP”) respectfully requests review of the Regional Director’s February 15, 2018¹ Decision and Direction of Election (“Decision”) and resulting March 6 certification of the election held on February 23. The Decision incorrectly directed an election in an inappropriate bargaining unit that apparently included AMP Operators from other facilities working at the Smithland facility on temporary assignments. The Decision approved the unit even though AMP and the Petitioner International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816 (“Petitioner”) **agreed** that these other Operators did not share a community of interest with the eight Operators who should be in the bargaining unit. The Decision even failed to include a general exclusion of “all other employees” from the unit description included in the petition itself and agreed to by AMP and Petitioner at the hearing.

¹ Unless otherwise noted, all dates are in 2018.



The Decision approved an inappropriate unit based on an incorrect legal conclusion that disagreements over the inclusion of these other employees in the bargaining unit should be resolved through collective bargaining. But settled Board law establishes that the scope of the bargaining unit is a permissive subject of bargaining, so AMP cannot compel resolution of whether particular employee classifications are inside or outside the bargaining unit in bargaining. Such issues must be resolved now.

As both sides agree that the AMP Operators from other facilities working at Smithland on temporary assignments lack a community of interest with the Smithland employees, the Board should reverse the Decision, revise the unit description consistent with AMP's position (and Petitioner's admissions regarding the employees at issue), vacate the certification, and direct another election be held in the resulting appropriate bargaining unit.

II. FACTS²

A. AMP Has Assigned Operators From Other Facilities To Work At Smithland On A Temporary Basis.

AMP employs eight individuals in Operator I or Operator II job classifications³ at its Smithland, KY facility. (Decision p. 2) AMP and Petitioner agree that these eight individuals are appropriately included in the bargaining unit.

AMP also employs Operators at other AMP facilities, such as its Cannelton facility, also located in Kentucky. (Id. at 3)

AMP has assigned Operators from other AMP facilities to perform Operator work at Smithland on a temporary basis. As the Decision found, AMP temporarily assigned four

² For the Board's convenience, the Decision is attached as Exhibit 1. AMP will cite to the hearing transcript as Tr. ___. Excerpts of the transcript are attached as Exhibit 2.

³ Because the distinction between the Operator I and Operator II job classifications makes no difference in this case, AMP will use the term Operator to encompass both job classifications.

Operators from Cannelton to Smithland in 2017. (Id.) These four Operators performed Operator work at Smithland for a total of more than ten days. (Id.)

AMP also assigned Joe Frakes, another Operator from Cannelton, to work at Smithland on a temporary basis in 2017 and 2018. (Id.) Frakes worked at Smithland for five days a week from about June 2017 to October 2017 and then about one day a week from October 2017 until mid-January 2018. (Id. at 3-4) Frakes last worked at the Smithland facility only days before the petition in this case was filed. (Id. at 2; Tr. 38) Frakes spent about half his time at Smithland performing Operator work. (Decision p. 4) Frakes is not a supervisor. (Id.)

AMP would temporarily assign Operators from other facilities to work at Smithland under various operational scenarios, such as where the Smithland Operators lacked the needed expertise to perform a necessary task or where there were staffing issues. (Decision p. 4; Tr. 42) AMP could also assign Operators from other facilities to work at Smithland during an outage (where AMP would want to increase staffing to decrease the downtime associated with the outage). (Tr. 57-58)

B. The Decision Approved A Unit Seemingly Including These Other Operators.

The Decision approved the following unit:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

(Decision p. 2)

The unit approved by the Decision appears to include the Operators from other AMP facilities working at Smithland on temporary assignments. These individuals are Operators. (Decision pp. 3-4) They were employed by AMP at the Smithland facility, albeit temporarily.

The Decision rejected AMP's attempts to make it clear that Operators from other AMP facilities working at Smithland on temporary assignments are not in the unit. (Decision p. 2) Petitioner claimed that if AMP's proposed unit description were accepted, "the unit placement of employees temporarily performing bargaining unit work at the Smithland facility . . . would be a permissive subject of bargaining instead of a mandatory subject of bargaining. The Union does not want to acquiesce to an automatic exclusion of these employees from the bargaining unit and would prefer to bargain over their placement with the Employer should the issue arise in the future." (Id. at 3)

The Decision agreed with Petitioner on this point of law, stating: "Leaving the temporarily assigned employees out of the exclusions at this time leaves more room for the parties to adjust their unit description by negotiation, if they wish, in the event the Employer begins to assign such employees to Smithland." (Id. at 5) The Decision also found: "Furthermore, the concerns Petitioner raised in voluntarily agreeing to specifically exclude employees on temporary assignments are valid. The issue of temporary assignments from other facilities is not a unique issue and should the Petitioner become the certified representative of the petitioned-for unit, such an issue is one that is better resolved through the collective bargaining process." (Id. at 5-6)

As explained below, the Decision's legal conclusion is incorrect and led to the approval of an inappropriate unit that appears to include individuals who do not share a community of interest with the eight employees properly in the unit.⁴

⁴ The Decision also excluded, without explanation, language excluding "all other employees" from the unit even though both AMP and Petitioner agreed to this exclusion. (Tr. 10) This agreed language should have been included as well.

III. ARGUMENT

The Decision should be reversed and the resulting certification vacated for any or all of the following independently sufficient reasons.

A. Operators Temporarily Assigned To Smithland Do Not Share A Community Of Interest With Operators Primarily Assigned To Smithland.

The fact that the Operators employed by AMP working at Smithland on temporary assignments do not share a community of interest with the eight Operators primarily assigned to Smithland is not disputed. At the hearing, Petitioner admitted under questioning from the Hearing Officer that Frakes should be **excluded from the bargaining unit based on a lack of a community of interest.** (Tr. 13-14)

Despite Petitioner's admission that the Operators temporarily assigned to Smithland do not have a community of interest with the Operators primarily assigned to Smithland, the Decision approved a unit that appeared to include them. The Decision did **not** find that the Operators temporarily assigned to Smithland share a community of interest with the Operators primarily assigned to Smithland. Nor could the Decision have done so on this record.

The Board should correct this error.

B. The Decision Approved The Unit Based On A Legal Error Regarding The Suitability Of Future Collective Bargaining To Address The Inclusion Of Operators Temporarily Assigned To Smithland In The Bargaining Unit.

As explained above, the Decision accepted Petitioner's argument that the placement of Operators temporarily assigned to Smithland in the bargaining unit should be addressed in future collective bargaining instead of in the representation proceeding. (Decision pp. 5-6)

In doing so, the Decision committed legal error. It is settled law that the scope of the bargaining unit is a **permissive** subject of bargaining. Raymond F. Kravis Ctr. for the Performing Arts, 351 NLRB 143, 144 (2007) ("The scope of the bargaining unit is a permissive

subject of bargaining over which a party may not insist to impasse.”); Grosvenor Orlando Assocs., Ltd., 336 NLRB 613, 617 (2001) (collecting cases) (“The Board has long held that ‘[u]nit scope is not a mandatory bargaining subject, and consequently a party may not insist to impasse on alteration of the unit.’”) (citations omitted); Branch Int’l Servs., 310 NLRB 1092, 1103 (1993) (accord); Chicago Beef Co., 298 NLRB 1039, 1049 (1990) (accord); Syncor Int’l Corp., 282 NLRB 408, 409 (1986) (accord). Accordingly, this issue cannot be resolved in collective bargaining over the objection of one party. As the unit description on its face appears to include Operators temporarily assigned to Smithland in the bargaining unit, AMP has no ability to compel a resolution of this issue outside of this proceeding.

The Board should correct this legal error.

C. The Decision Incorrectly Viewed This Issue As Academic.

The Decision appeared to rely on the fact that no Operators from other AMP facilities were **currently** working at Smithland at the time of the petition and that AMP did not have any **current** plans to assign Operators from other AMP facilities to work at Smithland in the immediate future. (Decision p. 5) (“Board law also supports omitting the placement of employees temporarily assigned to Smithland in the absence of any finite plans on the Employer’s part to resume assigning these employees to that facility.”)

The Decision’s reliance on these facts was misplaced. AMP has a concrete, recent history of making such assignments. Four employees worked at Smithland on temporary assignments totaling more than ten days in 2017. (Id. at 3) Frakes worked at Smithland about five days a week from June 2017 to October 2017 and then about one day a week from October 2017 until January 2018. (Id. at 3-4) Frakes’ assignment ended shortly before the petition was filed. (Tr. 38) The fact that the petition happened to be filed in late January (when Frakes was

not working at Smithland) as opposed to mid-January (when he was) should not have been given any weight by the Decision, much less seemingly controlling weight.

Furthermore, the Decision did not give proper weight to AMP's evidence of circumstances where it would make temporary assignments to Smithland in the future. AMP explained that it would make such assignments based on the need for particular expertise or in response to a severe staffing issue. (Decision p. 4) AMP further explained that it would make such assignments in response to an outage. (Tr. 57-58) These are not imaginary scenarios. The mere fact that AMP did not know at the moment of the hearing that one of them would occur in the immediate future was not a valid reason for the Decision to refuse to exclude these Operators from the unit when they undeniably lacked a community of interest with the Operators primarily assigned to Smithland.

The problem created by the Decision's failure to resolve the unit status of Operators from other plants working on temporary assignments at Smithland cannot be solved by finding these Operators ineligible to vote. The Board's policy is that unit placement and voting eligibility are inseparable issues; any employee who may be represented as the result of an election has the right to vote in that election. Post Houses, Inc., 161 NLRB 1159, 1172-1173 (1966).

The Decision's failure to resolve the unit status of Operators from other plants working on temporary assignments at Smithland matters to AMP. If this issue remains unresolved, AMP could have to bargain over the terms and conditions of employment of Operators primarily assigned to other plants who lack a community of interest with the Operators primarily assigned to Smithland. Operators primarily assigned to other plants would have different and likely conflicting concerns compared to the Operators primarily assigned to Smithland (who may not want Operators from other plants working at Smithland at all). AMP needs to know the unit

status of Operators primarily assigned to other plants with certainty before productive bargaining can begin.

Because the Decision failed to resolve this issue, it should be reversed.

D. The Decision Incorrectly Relied On Inapplicable Board Law.

The Decision relied on inapplicable Board decisions involving unit clarification petitions to reach an incorrect conclusion. In Coca-Cola Bottling Co. of Wisconsin, 310 NLRB 844 (1993), the Board found the fact that production employees had been included in successive recognition clauses in collective bargaining agreements did not matter when the employer had ceased production operations for twelve years and had no production employees during this time. Id. at 844. Coca-Cola Bottling is distinguishable from AMP's case, where: (1) five Operators worked on temporary assignments at Smithland in the last year; (2) one of those Operators worked at Smithland regularly for about seven months before the petition; (3) this Operator worked at Smithland shortly before the petition was filed; and (4) there is no recognition clause.

The Decision's citation of ITT World Communications, 201 NLRB 1 (1973), is mistaken. In ITT, the Board dismissed a unit clarification petition because the employees at issue were statutory supervisors. Id. at 2. ITT has no bearing here.

The Board's decision in Union Electric, 217 NLRB 666 (1975), is also inapplicable. In that case, the Board observed that the petition for unit clarification was improper "where, as here, contractual and established exclusions are involved. Instead, the issues thus raised are . . . ones to be resolved through the collective-bargaining process or in a proceeding under Section 9(c) of the Act." Id. at 667. In AMP's case, there are no "contractual and established exclusions" involved. So collective bargaining cannot resolve the unit placement issue given the permissive nature of bargaining over the scope of the unit.

The Decision's attempt to distinguish Indiana Bottled Gas, 128 NLRB 1441 (1960) and F.W. Woolworth, 119 NLRB 480 (1957), is unavailing. (Decision p. 5) To be sure, AMP's case involves full-time AMP Operators primarily assigned to other plants and not temporary, casual, or seasonal employees. But that is not the point. The point is that individuals in disputed classifications need not be actively working in order to have their unit status resolved in a representation case. At the hearing, AMP demonstrated that it had assigned Operators from other plants to work at Smithland recently (five assignments in the last year, including one assignment lasting about seven months and ending shortly before the petition was filed). (Decision pp. 3-4; Tr. 38) And AMP explained several circumstances under which it would make such assignments in the future, including the need for expertise, staffing issues, and an outage at Smithland. (Decision p. 4; Tr. 57-58)

The coincidence that no Operators primarily assigned to other AMP plants happened to be working at Smithland at the moment the petition was filed and that AMP did not have definite plans to make such an assignment on the day of the hearing is not a valid reason to fail to resolve the unit placement issue in this case. Because the Decision refused to resolve the unit placement issue, it should be reversed.

E. The Decision Failed To Include An Agreed Exclusion.

The petition's unit definition included a general (and common) exclusion of "all other employees." (Decision p. 1) AMP sought to preserve this exclusion at the hearing. (Tr. 10) Petitioner stated that it was "good with that" exclusion. (Tr. 10)

The Decision failed to include this petitioned for and agreed exclusion in the unit definition and offered no reason for doing so. The Board should correct this failure.

F. The Board Should Set Aside The Certification And Direct Another Election In An Appropriate Unit.

AMP respectfully submits that the unit should be defined as follows (with additions to the unit approved by the Decision noted in bold):

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. **and primarily assigned to** its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, supervisors as defined by the Act, **and all other employees.**

After the Board corrects the unit definition, the Board should vacate the certification and direct another election in the resulting appropriate unit. Because the original unit was not appropriate, the first election result should be set aside.⁵

⁵ AMP recognizes that directing another election may seem odd when the same eight employees who voted in the first election could end up voting in the second election. This assumed fact (there could be Operator turnover in the interim) does not matter when the unit approved by the Decision was inappropriate. Sunrise, A Cmty. for the Retarded, Inc., 282 NLRB 252 (1986) (Board agreed that “unit on its face violates Section 9(b)(1) of the Act, but we disagree that the defect can be remedied simply by modifying the unit. Rather, because the election was held in an inappropriate unit, we find that the election must be set aside.”); Burnet-Binford Lumber Co., Inc., 75 NLRB 421, 425 (1947) (setting aside election conducted in an inappropriate unit).

IV. CONCLUSION

For each and all of the foregoing reasons, the Board should grant AMP's request for review, revise the unit definition as set forth above to make it appropriate, vacate the certification, and direct another election in the resulting appropriate unit.

Respectfully submitted,

/s/ Kerry P. Hastings

Kerry P. Hastings
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Tel: (513) 381-2838
Fax: (513) 381-0205
hastings@taftlaw.com

Attorney for American Municipal Power, Inc.

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Request for Review was electronically filed with the National Labor Relations Board and served by e-mail on March 19, 2018 upon the following:

International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816,
c/o: Chad Donathan
chad_donathan@ibew.org

John D. Doyle, Jr.
Regional Director
National Labor Relations Board
Region 10
john_doyle@nlrb.gov

Pursuant to 29 C.F.R. § 102.67(i), a true and accurate copy of the foregoing Request for Review has also been electronically filed with the Regional Director on March 19, 2018.

/s/ Kerry P. Hastings
Kerry P. Hastings

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MUNICIPAL POWER, INC.
Employer

and

Case 10-RC-213684

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO,
LOCAL UNION NO. 816
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, MEMBER

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., May 31, 2018.

¹ In denying review, we note that, contrary to the Employer's argument, it may be able to resolve the unit placement of future temporary assignees, under the appropriate circumstances, through the unit-clarification process. See *Union Electric Co.*, 217 NLRB 666, 667 (1975)(unit clarification petition can be used to resolve ambiguities regarding the unit placement of either newly-established classifications or those that have undergone "recent, substantial" changes). We do not, however, rely on the Regional Director's citation of *ITT World Communications*, 201 NLRB 1, 2 (1973) for the proposition that the Board has dismissed unit clarification petitions when the petitioned for classification had no actual employees within the classification. We also note that, contrary to the Regional Director's suggestion, the Board will in fact exclude as temporary an otherwise-permanent employee who is only temporarily assigned to the facility at which an election is being conducted. See *Marian Medical Center*, 339 NLRB 127, 128-129 (2003). Finally, we find it unnecessary to modify the Regional Director's unit description to exclude "all other employees," because although the parties agreed to such an exclusion at the hearing, it remained the Regional Director's decision whether to include such language, and the absence of this phrase does not render the unit inappropriate and did not affect the eligibility of any employees.





International Brotherhood of Electrical Workers

Local 816

4515 CLARK'S RIVER ROAD • PADUCAH, KENTUCKY 42003 • PHONE: 270-898-2456 • FAX: 270-898-2694
www.ibewlocal816.org

April 10, 2018

Ronald Woodward
American Municipal Power, Inc.
1297 Smithland Dam Rd.
Smithland, KY 42081

Mr. Woodard:

As you know, International Brotherhood of Electrical Workers Local No. 816, is the exclusive bargaining representative of the employee's in the following unit:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act ("Bargaining Unit").

The Union is requesting from the company, possible dates to meet, to begin the negotiation process. We feel that a meeting between the company and Union negotiation committees is necessary prior to the actual presentation of proposals to discuss the ground rules for the negotiations, for introductions, and scheduling of future negotiation sessions.

The Union is proposing that the first meeting take place on one of the following dates, May 8, May 9 and/or May 10, 2018.


Respectfully,

Jimmy Evans, Business Manager/Financial Secretary
IBEW Local 816


CERTIFIED MAIL 7014 2870 0000 1874 2173

Monthly Meeting First Friday, 7:00 P.M.




SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<div>■ Complete items 1, 2, and 3.</div> <div>■ Print your name and address on the reverse so that we can return the card to you.</div> <div>■ Attach this card to the back of the mailpiece, or on the front if space permits.</div>		<div>A. Signature X</div> <div><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</div>	
1. Article Addressed to: KY DEPT OF LABOR 1047 US 127 S STE 4 FRANKFORT KY 40601		B. Received by (Printed Name) C. Date of Delivery	
 9590 9402 2021 6123 4049 59		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No APR 13 2018 CHRIS HOWARD	
2. Article Number (Transfer from service label) 7014 2870 0000 1874 2197		3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	

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1. Article Addressed to: FMCS NOTICE PROCESSING UNIT 250 E STREET SW WASHINGTON DC 20427		B. Received by (Printed Name) C. Date of Delivery 4/20	
 9590 9402 2021 6123 4049 28		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label) 7014 2870 0000 1874 2180		3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	

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1. Article Addressed to: RONALD WOODWARD AMERICAN MUNICIPAL POWERING 1287 SMITHLAND DAM RD SMITHLAND KY 42081		B. Received by (Printed Name) C. Date of Delivery	
 9590 9402 2021 6123 4049 35		D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No 1297 Smithland Dam Rd. Smithland KY 42081	
2. Article Number (Transfer from service label) 7014 2870 0000 1874 2173		3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	

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International Brotherhood of Electrical Workers

Local 816

4515 CLARK'S RIVER ROAD • PADUCAH, KENTUCKY 42003 • PHONE: 270-898-2456 • FAX: 270-898-2694
www.ibewlocal816.org

May 14, 2018

Ronald Woodward
American Municipal Power, Inc.
1297 Smithland Dam Rd.
Smithland, KY 42081

Mr. Woodward:

The Union has previously sent a request for dates to begin bargaining for the Company's employees at the Smithfield Hydro Electric Generation facility, and the company has failed to answer that request.

While we are fully aware that the Company has filed for an amendment to the certified unit, that does not relieve the company from its obligation to meet with the representatives of the Union, and to maintain the "status quo" for the current bargaining unit.

The Union is again requesting that the company contact us with possible dates to meet for the purpose of beginning the bargaining process. We are also making the following request for information to determine if "status quo" is being upheld.

The Union requests that the company provide a list of all classifications in the Power Generation branch of their business that have received a general wage increase over the last two years. We request the number of employees receiving those raises, and the date that those raises took effect. We also need a list of all classifications that have **not** received a general wage increase over the last two years, and the date of the last general wage increase that those employees received, and the date of the increase.

In the attached document from the Nation Labor Relations website, you will see that a regularly scheduled wage increase for employees must also be given to represented employees to maintain the status quo. Giving a general annual increase to non-represented employees, without a discussion with the Union representatives, and not including employees because of their represented status would be a discriminatory practice, and subject to an Unfair Labor Practice Under the NLRA Section 8(a) 1, and 5.

The Union is requesting that the information requested be supplied to the Local Union Office at the address listed above, by the close of business May 25, 2018. Should the company fail to contact us with the information as requested, we will have no other recourse than to file multiple ULP charges for failure to meet with the Union for bargaining, and supplying information by the Union to properly represent our bargaining unit.

Thanks for your prompt consideration in this matter.

Jimmy Evans, B.M.F.S.
IBEW LU 816

Enclosure

CERTIFIED MAIL 7014 2870 0000 1874 1947

Monthly Meeting First Friday, 7:00 P.M.





International Brotherhood of Electrical Workers

Local 816

4515 CLARK'S RIVER ROAD • PADUCAH, KENTUCKY 42003 • PHONE: 270-898-2456 • FAX: 270-898-2694
www.ibewlocal816.org

May 14, 2018

Elizabeth Lander
Director of Human Resources
1111 Schrock Rd Ste 100
Columbus OH 43229

Ms. Lander:

The Union has previously sent a request for dates to begin bargaining for the Company's employees at the Smithfield Hydro Electric Generation facility, and the company has failed to answer that request.

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Thanks for your prompt consideration in this matter.

Jimmy Evans, B.M.F.S.
IBEW LU 816

Enclosure

CERTIFIED MAIL 7014 2870 0000 1874 1954

Monthly Meeting First Friday, 7:00 P.M.



International Brotherhood of Electrical Workers

Local 816

4515 CLARK'S RIVER ROAD • PADUCAH, KENTUCKY 42003 • PHONE: 270-898-2456 • FAX: 270-898-2694
www.ibewlocal816.org

May 14, 2018

Scott Kiesewetter
Senior VP of Generation Operations
1111 Schrock Rd Ste 100
Columbus OH 43229

Mr. Scott

The Union has previously sent a request for dates to begin bargaining for the Company's employees at the Smithfield Hydro Electric Generation facility, and the company has failed to answer that request.

While we are fully aware that the Company has filed for an amendment to the certified unit, that does not relieve the company from its obligation to meet with the representatives of the Union, and to maintain the "status quo" for the current bargaining unit.

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Thanks for your prompt consideration in this matter.

Jimmy Evans, B.M.F.S.
IBEW LU 816

Enclosure

CERTIFIED MAIL 7014 2870 0000 1874 1978

Monthly Meeting First Friday, 7:00 P.M.



International Brotherhood of Electrical Workers

Local 816

4515 CLARK'S RIVER ROAD • PADUCAH, KENTUCKY 42003 • PHONE: 270-898-2456 • FAX: 270-898-2694
www.ibewlocal816.org

May 14, 2018

Kerry P. Hastings
Taft Stettinius & Hollister, LLP
425 Walnut Street, Ste 1800
Columbus OH 43202-3957

Mr. Hastings:

The Union has previously sent a request for dates to begin bargaining for the Company's employees at the Smithfield Hydro Electric Generation facility, and the company has failed to answer that request.

While we are fully aware that the Company has filed for an amendment to the certified unit, that does not relieve the company from its obligation to meet with the representatives of the Union, and to maintain the "status quo" for the current bargaining unit.

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Thanks for your prompt consideration in this matter.

Jimmy Evans, B.M.F.S.
IBEW LU 816

Enclosure

CERTIFIED MAIL 7014 2870 0000 1874 1985

Monthly Meeting First Friday, 7:00 P.M.



International Brotherhood of Electrical Workers

Local 816

4515 CLARK'S RIVER ROAD • PADUCAH, KENTUCKY 42003 • PHONE: 270-898-2456 • FAX: 270-898-2694
www.ibewlocal816.org

May 14, 2018

Phil Meier
VP of Hydroelectric Development and Operations
1111 Schrock Rd Ste 100
Columbus OH 43229

Mr. Meier

The Union has previously sent a request for dates to begin bargaining for the Company's employees at the Smithfield Hydro Electric Generation facility, and the company has failed to answer that request.

While we are fully aware that the Company has filed for an amendment to the certified unit, that does not relieve the company from its obligation to meet with the representatives of the Union, and to maintain the "status quo" for the current bargaining unit.

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Thanks for your prompt consideration in this matter.

Jimmy Evans, B.M.F.S.
IBEW LU 816

Enclosure

CERTIFIED MAIL 7014 2870 0000 1874 1961

Monthly Meeting First Friday, 7:00 P.M.

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DO NOT WRITE IN THIS SPACE

Case

10-CA-221403

Date Filed

06/04/2018

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer American Municipal Power Incorporated		b. Tel. No. 270-928-3020
		c. Cell No. 614-403-8147
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 1297 Smithland Dam Rd. Smithland, KY 42081	e. Employer Representative Ronald Woodward	g. e-Mail rwoodward@amppartners.org
		h. Number of workers employed 8
i. Type of Establishment (factory, mine, wholesaler, etc.) Utility	j. Identify principal product or service Hydroelectric Power	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) and 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about April 10, 2018, and at all times thereafter, the Employer by its officers, agents, and representatives, has failed and refused to bargain in good faith with the IBEW Local 816 by refusing to meet and negotiate a collective bargaining agreement.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
International Brotherhood of Electrical Workers AFL-CIO Local Union No.816

4a. Address (Street and number, city, state, and ZIP code) 4515 Clarks River Road Paducah, Ky 42003	4b. Tel. No. 270-898-2456
	4c. Cell No. 859-404-8905
	4d. Fax No. 270-898-2694
	4e. e-Mail chad_donathan@ibew.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
International Brotherhood of Electrical Workers

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Chad Donathan
(signature of representative or person making charge)Chad Donathan
(Print/type name and title or office, if any)

Address 235 Juniper Ct Mt. Sterling Ky

Tel. No. 859-404-8905

Office, if any, Cell No.
859-404-8905

Fax No.

e-Mail
chad_donathan@ibew.org

EXHIBIT

12

6/4/2018
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE**

AMERICAN MUNICIPAL POWER, INC.

and

Case 10-CA-221403

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, LOCAL
UNION NO. 816**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by International Brotherhood of Electrical Workers, AFL-CIO, Local Union No. 816 (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that American Municipal Power, Inc. (Respondent) has violated the Act as described below.

1.

The Union filed the charge in this proceeding on June 4, 2018, and a copy was served on Respondent by U.S. mail on June 5, 2018.

2.

At all material times, Respondent has been an Ohio corporation with a hydroelectric power-generation plant in Smithland, Kentucky, and has been engaged in the generation, transmission, and distribution of electric power and energy.

3.

In conducting its operations described above in paragraph 2, Respondent annually purchases and receives at its Smithland, Kentucky power plant goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky.



4.

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6.

The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Operator I and Operator II employees employed by American Municipal Power, Inc. at its facility located at 1297 Smithland Dam Road, Smithland, Kentucky, excluding office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

7.

On February 23, 2018, a representation election was conducted among the employees in the Unit and, on March 6, 2018, the Union was certified as the exclusive collective-bargaining representative of the Unit in Case 10–RC–213684.

8.

At all times since March 6, 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

9.

About April 10, 2018 and May 14, 2018, the Union, by letter, requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

10.

Since about April 10, 2018, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

11.

By the conduct described above in paragraph 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

12.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 28, 2018, or postmarked on or before June 27, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused

on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a PDF document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a PDF file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.


NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on a **date and a time to be designated, and at a place to be determined**, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form

NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 14, 2018

John D. Doyle Jr.
Regional Director
National Labor Relations Board
Region 10, By



Scott C. Thompson
Officer-In-Charge
National Labor Relations Board
Subregion 11
4035 University Pkwy Suite 200
Winston-Salem, NC 27106-3275

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

AMERICAN MUNICIPAL POWER, INC., and, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL UNION NO. 816	Case No: 10-CA-221403
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ANSWER

For its answer to the Complaint, Respondent American Municipal Power, Inc. ("AMP") states as follows:

1. AMP admits the allegations contained in paragraph 1 of the Complaint.
2. AMP admits that it is an Ohio corporation with a hydroelectric power-generation plant in Smithland, Kentucky and is engaged in the generation, transmission, and distribution of electric power and energy to its members.
3. AMP admits the allegations contained in paragraph 3 of the Complaint.
4. AMP admits the allegations contained in paragraph 4 of the Complaint.
5. AMP admits the allegations contained in paragraph 5 of the Complaint.
6. AMP denies the allegations contained in paragraph 6 of the Complaint.
7. AMP admits that a representation election was conducted on February 23, 2018 according to the Regional Director's Decision and Direction of Election in Case No. 10-RC-213684, but AMP otherwise denies the allegations contained in paragraph 7 of the Complaint as the purported certification of representative in the aforementioned representation proceeding was invalid.

8. AMP denies the allegations contained in paragraph 8 of the Complaint.
9. AMP admits the allegations contained in paragraph 9 of the Complaint.
10. AMP admits the allegations contained in paragraph 10 of the Complaint.
11. AMP denies the allegations contained in paragraph 11 of the Complaint.
12. AMP denies the allegations contained in paragraph 12 of the Complaint.
13. AMP denies all allegations of the Complaint not specifically admitted.

FIRST DEFENSE

The Decision and Direction of Election in Case No. 10-RC-213684 directed a representation election in an inappropriate unit that apparently includes employees whom the Union conceded do not share a community of interest with the employees who should be in the unit, so the purported certification issued as a result of the aforementioned representation election is invalid.

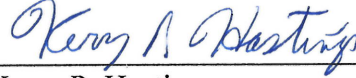
SECOND DEFENSE

AMP reserves the right to assert any additional defenses that it may discover during the course of this litigation.

WHEREFORE, having fully answered the Complaint, AMP respectfully requests that the

Complaint be dismissed and that AMP be awarded attorney fees and any other relief that is just and proper.

Respectfully submitted,

A handwritten signature in blue ink, reading "Kerry P. Hastings", is positioned above a horizontal line.

Kerry P. Hastings

Conor H. Meeks

Taft Stettinius & Hollister LLP

425 Walnut Street, Suite 1800

Cincinnati, Ohio 45202

Phone: (513) 381-2838

Fax: (513) 381-0205

hastings@taftlaw.com

cmeeks@taftlaw.com

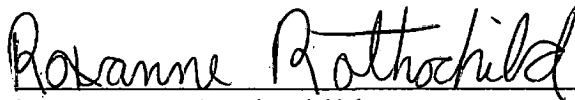
*Attorneys for Respondent American Municipal
Power, Inc.*

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

AMERICAN MUNICIPAL POWER, INC)	
Petitioner/Cross-Respondent)	Nos. 18-1958, 8-1995
)	
v.)	Board Case No.
)	10-CA-221403
NATIONAL LABOR RELATIONS BOARD)	
Respondent/Cross-Petitioner)	

**CORRECTED CERTIFIED LIST OF THE
NATIONAL LABOR RELATIONS BOARD**

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list set forth in the attached Index, consisting of three volumes, fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in American Municipal Power, Inc., Case No. 10-CA-221403, which took official notice of the record in Case No. 10-RC-213684.



Roxanne L. Rothschild
Acting Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

October 24, 2018

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10-CA-221403

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¹ Board Exhibits 1, 2, 3, 4, 6, 7, 12, 13 and 14 were detached from the motion and placed in chronological order in the Volume of Pleadings.

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Petitioner/Cross-Respondent)	Nos. 18-1958, 18-1995
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v.)	Board Case No.
)	10-CA-221403
NATIONAL LABOR RELATIONS BOARD)	
Respondent/Cross-Petitioner)	

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2018, I filed the foregoing corrected document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE.
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
this 24th day of October 2018